ECLEG JUL09'13 AM 9:51

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES

MEMORANDUM

TO: Brian Bray

FROM: Carol Dankert-Maurer

DATE: June 27, 2013

RE: Confidentiality and Records Management

As requested by the County Legislature here is a copy of Erie County Department of Social Services policies related to Confidentiality and Records Management.

ECDSS Memos Pertaining to Confidentiality and Records Management 2007-2013

	Date	Title or Description	Issued By	Summary
1	4/9/2007	Guidelines for Using Electronic Communication and Sharing Case Specific Information	Michael Weiner, Commissioner of ECDSS	This memo outlines the steps to take to protect confidential, sensitive information when communicating via fax, email, and CONNECTIONS.
2	2/18/09	Protection of Confidential Information	Michael Weiner, Commissioner of ECDSS	This memo reminds staff of the requirement to maintain the confidentiality of information maintained in state and county computer systems and databases.
3	2/23/09	State Guidance re: Confidentiality	New York State	This memo references state laws and regulations regarding the protection of confidential information pertaining to the State Central Register of reports of child abuse and neglect.
4	6/1/09	Email to All Staff Re: County Recycling	Commissioner's Office	This email to all staff introduces a new recycling vendor, which includes a provision for new LOCKED recycling totes. It outlines the importance of maintaining the confidentiality of all records, and stresses that tampering with or disabling the locked totes will be considered a serious violation of the Department's policy on confidentiality.
5	11/30/10	Use and Protection of Confidential Information (reissued annually and to all new employees at Orientation)	Carol Dankert, Commissioner of ECDSS	This memo reminds staff of the requirement to assure appropriate protection, access to and disclosure of confidential information maintained in state and county systems and databases. It also outlines protocols for reporting a breach of confidentiality.
6	4/8/13	Record Access and Disposal	Mary Ellen Brockmyre, Assistant Commissioner, ECDSS	This memo informs the staff of Financial Records Services of the procedure for proper access and disposal of confidential records.
7	5/22/13	Disposing of Confidential Records	Sandra Neubert, Director of Employment Michael Gonciarz, Director of Temporary Assistance	This memo reiterates the importance of keeping all confidential information secure. It includes the daily emptying of personal recycle boxes and copier recycle boxes into the locked totes.
8	6/10/13	Staff Expectations for Maintaining Confidentiality and Proper Disposal of Records	Mary Ellen Brockmyre, Assistant Commissioner, ECDSS	This memo was given to all staff, who had to acknowledge receipt and understanding of its contents. It reviews the protocol for maintaining customer confidentiality at all times. It also introduces the requirement of all staff to take a training entitled "Information Security Awareness."
9	6/26/13	Erie County Department of Social Services Confidentiality and Information Security Policy Handbook	Mary Ellen Brockmyre, Assistant Commissioner, ECDSS	This 15-page handbook is a comprehensive guide to all ECDSS policies and procedures for maintaining customer confidentiality. It was distributed to all staff, with an electronic attestation function that each staff member must use to demonstrate understanding of the policies included in the handbook.

MEMORANDUM
Erie County Department of Social Services

TO: All Staff

FROM: Michael Weiner, Commissioner MW

DATE: 4/9/07

SUBJECT: Guidelines for Using Electronic Communication and Sharing Case Specific Information

---

Guidelines for Using Electronic Communication and Sharing Case Specific Information

All staff persons need to be aware of the necessary steps to be taken to protect case specific information that identifies clients and the types of services being provided. Legal standards exist that limit re-disclosure of client identifiable information between and among district staff, contracted agency service providers or other persons who have a legal right to the information. Applicable standards depend on various factors, including the service type or other case factors such as whether it is HIV related information.

To maintain the confidentiality of case and individual client information, staff must use the following order of preference when sharing data:

Faxing
Prior to faxing confidential or case specific information, the individual to whom the information is being sent must be contacted to verify the fax number, notify them the fax is being sent and to request confirmation of receipt of the fax.

Email within the intranet
Communicating information within the **intranet** system can be completed if it is determined there is no other alternative method available. When using the intranet, users are forwarding information to another user within the county network (i.e. erie.gov). Although information within the intranet is secure, there are still risks within the system and users must exercise caution. **The biggest risk in using email is user error (for example, inadvertently sending to the wrong person).**

If the intranet is used, information being shared should be limited to non-confidential information to the extent possible. If case specific information must

be sent, it should be entered on to a WORD document or EXCEL spreadsheet and password protected.

TO PASSWORD PROTECT A DOCUMENT:

1. Open the document.
2. On the **File** menu, click **Save As**. It is good practice to save it as a copy, so that if you forget the password, you still have access to your original.

Please note that if you forget the password, you cannot open or gain access to the password-protected document.

3. On the **Tools** menu in the **Save As** dialog box, click **General Options**.
4. In the **Password to open** box, type a password, and then click **OK**.
5. In the **Reenter password to open** box, type the password again, and then click **OK**.
6. Click **Save**.
7. Call the person to whom you are sending the document to and provide him or here the password. (Note: Do not provide the selected password to the individual in the title or body of the e-mail message)

Do not reference individual or case names in the subject line in the e-mail.
Only use intranet email; **do not send case specific data over the Internet**. An internet address is any e-mail address OTHER than an Erie County addresses (erie.gov). This includes but is not limited to e-mail sent to a state system e-mail address (state.ny.us).

Before hitting the Send button, **be certain** that the name of the person you have chosen is correct. There are many people in the Global Address Book with the same or similar names. This heightens the risk of sending information to the wrong person. If you are not sure of the identity of the person in the Global Address Book, right click on the name and then on Properties. If you are still unsure, call the person first to verify their email address.

Caution the person(s) to whom the data is being sent that the data is not to be forwarded without consideration of all of the issues contained in these guidelines.

Security Measures for CONNECTIONS Users.
The CONNECTIONS system is the most secure method of sharing data and should be used whenever possible. Caseworkers and Child Protection workers should use the CONNECTIONS electronic case record to access the information through a "To Do" or the assignment of a role.

If CONNECTIONS cannot be utilized, the user must then consider either faxing the information or sending the information via the intranet.

MEMORANDUM

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES

FROM: Michael Weiner, Commissioner MW

TO: All Staff

SUBJECT: Protection of Confidential Information

DATE: 02/18/09

I. Purpose

The purpose of this memorandum is to remind staff of the requirement to assure appropriate protection, access to and disclosure of confidential information maintained in State and County systems/databases.

II. Background

A number of incidents have come to the attention of the State Division of Legal Affairs/Information Security Office recently regarding inappropriate access and disclosure of confidential information stored in State and local district systems/databases.

The confidential information maintained in and/or obtained from the Office of Temporary and Disability Assistance (OTDA) systems/databases, such as, but not limited to Welfare Management System (WMS), Child Support Management System (CSMS/ASSETS), Benefits Issuance Control System (BICS), Commissioners Dashboard, and other such systems, is protected by Federal and State statutes and regulations. Access to and use of such information by State and County staff is ***strictly limited to authorized employees and legally designated agents for authorized purposes only.***

Authorized users must maintain the confidentiality and security of such personal, private and sensitive information in accordance with all applicable Federal and State regulations. Use and disclosure of such information is strictly limited to authorized purposes, such as uses directly connected with the administration and delivery of program services.

III. Program Implications

Federal and State program-specific confidentiality and information security rules prohibit unauthorized access and inappropriate dissemination of confidential information. They also limit the access and/or dissemination of such information to authorized, legitimate business purposes.

For example:

- Authorized users may not access their active, closed or archived case records, or those involving a relative, acquaintance, neighbor, friend, partner, co-worker, or other individuals to whom they have no official assignment.
- Authorized users may not disclose information received in their official capacity except in the performance of official job duties and for authorized purposes.
- No one may waive the confidentiality of federal, state, or county records.
- In certain circumstances, individuals may authorize a third party, such as an attorney or their adult children, to have access to their confidential information.

Unauthorized access to, or release of, such data may result in civil liability and/or criminal prosecution. Individuals who access such information without authorization, or disclose it beyond authorized official purposes, may be subject to disciplinary actions and/or termination.

IV. Information Security and Incident Reporting

OTDA has made safeguarding confidential, personal, private, and sensitive information a priority, to reduce the risk of information security breaches and assure ongoing compliance.

Management and staff must at all times be aware of the duty to ensure access to data is strictly limited to authorized individuals, and is used solely for legitimate business purposes. Failure to do so may result in termination of critical data exchanges – such as the computer matches between OTDA and the Social Security Administration (SSA) and Internal Revenue Service (IRS).

Unauthorized use may result in information security incident reporting and notification of affected individuals, and/or penalties ranging from loss of access to civil or criminal charges, depending upon the nature and severity of the breach.

Incidents involving the unauthorized access or disclosure of the confidential information in OTDA-maintained systems/databases **must** be reported to the OTDA Information Security Office.

If a security breach is suspected, an employee is to notify their supervisor of the incident. Supervision will then contact the Systems Support Unit who will notify the OTDA Information Security Office. When reporting an incident, please be prepared to provide a central point of contact, telephone number, and details to the nature, location, date, time, and individuals involved in the security breach. Additional information may be collected to assess the incident and determine appropriate response, reporting, and corrective actions. OTDA will notify the county Administration of any corrective action that needs to be taken.

Further information regarding information security incident reporting policies and procedures is available on the OTDA intranet at:

http://otda.state.nyenet/dla/iso/incidentreporting.htm

Questions should be directed to John Farr, Program Support, at x7383.

Social Services Law
§ 473-e. Confidentiality of protective services for adults' records

1. Definitions. When used in this section unless otherwise expressly stated or unless the context or subject matter requires a different interpretation:

(a) "Subject of a report" means a person who is the subject of a referral or an application for protective services for adults, or who is receiving or has received protective services for adults from a social services district.

(b) "Authorized representative of a subject of a report" means (i) a person named in writing by a subject to be a subject's representative for purposes of requesting and receiving records under this article; provided, however, that the subject has contract capacity at the time of the writing or had executed a durable power of attorney at a time when the subject had such capacity, naming the authorized representative as attorney-in-fact, and such document has not been revoked in accordance with applicable law; (ii) a person appointed by a court, or otherwise authorized in accordance with law to represent or act in the interests of the subject; or (iii) legal counsel for the subject.

2. Reports made pursuant to this article, as well as any other information obtained, including but not limited to, the names of referral sources, written reports or photographs taken concerning such reports in the possession of the department or a social services district, shall be confidential and, except to persons, officers and agencies enumerated in paragraphs (a) through (g) of this subdivision, shall only be released with the written permission of the person who is the subject of the report, or the subject's authorized representative, except to the extent that there is a basis for non-disclosure of such information pursuant to subdivision three of this section. Such reports and information may be made available to:

(a) any person who is the subject of the report or such person's authorized representative;

(b) a provider of services to a current or former protective services for adults client, where a social services official, or his or her designee determined that such information is necessary to determine the need for or to provide or to arrange for the provision of such services;

(c) a court, upon a finding that the information in the record is necessary for the use by a party in a criminal or civil action or the determination of an issue before the court;

(d) a grand jury, upon a finding that the information in the record is necessary for the determination of charges before the grand jury;

(e) a district attorney, an assistant district attorney or investigator employed in the office of a district attorney, a member of the division of state police, or a police officer employed by a city,

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

county, town or village police department or by a county sheriff when such official requests such information stating that such information is necessary to conduct a criminal investigation or criminal prosecution of a person, that there is reasonable cause to believe that the criminal investigation or criminal prosecution involves or otherwise affects a person who is the subject of a report, and that it is reasonable to believe that due to the nature of the crime under investigation or prosecution, such records may be related to the criminal investigation or prosecution;

(f) a person named as a court-appointed evaluator or guardian in accordance with article eighty-one of the mental hygiene law, or a person named as a guardian for the mentally retarded in accordance with article seventeen-A of the surrogate's court procedure act; or

(g) any person considered entitled to such record in accordance with applicable law.

3. The commissioner or a social services official may withhold, in whole or in part, the release of any information in their possession which he or she is otherwise authorized to release pursuant to subdivision two of this section, if such official finds that release of such information would identify a person who made a referral or submitted an application on behalf of a person for protective services for adults, or who cooperated in a subsequent investigation and assessment conducted by a social services district to determine a person's need for such services and the official reasonably finds that the release of such information will be detrimental to the safety or interests of such person.

4. Before releasing a record made pursuant to this article in the possession of the department or a social services district, the appropriate official must be satisfied that the confidential character of the information will be maintained in accordance with applicable law, and that the record will be used only for the purposes for which it was made available.

5. In addition to the requirements of this section, any release of confidential HIV related information, as defined in section twenty-seven hundred eighty of the public health law, shall comply with the requirements of article twenty-seven-F of the public health law.

6. When a record made under this article is subpoenaed or sought pursuant to notice to permit discovery, a social services official may move to withdraw, quash, fix conditions or modify the subpoena, or to move for a protective order, as may be appropriate, in accordance with the applicable provisions of the criminal procedure law or the civil practice law and rules, to (a) delete the identity of any persons who made a referral or submitted an application for protective services for adults on behalf of an individual or who cooperated in a subsequent investigation and assessment of the individual's needs for such services, or the agency, institution, organization, program or other entity when such persons are employed, or with which such persons are associated, (b) withhold records the disclosure of which is likely to be detrimental to the safety or interests of such persons, or (c) otherwise to object to release of all or a portion of the record on the basis that requested release of records is for a purpose not authorized under the law.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 9. EXECUTIVE DEPARTMENT
SUBTITLE E. DIVISION FOR YOUTH
PART 164. AIDS TESTING AND CONFIDENTIALITY OF HIV-RELATED INFORMATION:
REQUIREMENTS REGARDING TESTING, CONFIDENTIALITY AND PRECAUTIONS CONCERNING THE
HUMAN IMMUNODEFICIENCY VIRUS (HIV) AND ACQUIRED IMMUNE DEFICIENCY SYNDROME
(AIDS)

Current through Current with amendments included in the New York State Register, Volume XXXI, Issue 9, dated March 4, 2009.

Section 164.7. Confidentiality and disclosure

(a) Access to a youth's confidential HIV-related information shall be strictly limited. No flags or other markings on charts, lists on walls, or similar public displays shall be used to indicate youths' HIV status. Nothing in these regulations shall be construed to limit or enlarge access to that portion of a youth's file not containing confidential HIV-related information.

(b) No person who obtains confidential HIV-related information in the course of providing any health or social service or pursuant to a release of confidential HIV-related information may disclose or be compelled to disclose such information, except to the following:

(1) the protected individual or, when the protected individual lacks capacity to consent, a person authorized pursuant to law to consent to health care for the individual;

(2) any person to whom disclosure is authorized pursuant to a release of confidential HIV-related information in accordance with the regulations of the Department of Health set forth at 10 NYCRR section 63.4(a);

(3) an agent or employee of a health facility or health care provider if:

(i) the agent or employee is authorized to access medical records;

(ii) the health facility or health care provider itself is authorized to obtain the HIV-related information; and

(iii) the agent or employee provides health care to the protected individual, or maintains or processes medical records for billing or reimbursement;

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

(4) a health care provider or health facility when knowledge of the HIV-related information is necessary to provide appropriate care or treatment to the protected youth or a child of the youth;

(5) a health facility or health care provider, in relation to the procurement, processing, distributing or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, or other body fluids, for use in medical education, research, therapy, or for transplantation to individuals;

(6) health facility staff committees, or accreditation or oversight review organizations authorized to access medical records, provided that such committees or organizations may only disclose confidential HIV-related information:

(i) back to the facility or provider of a health or social services;

(ii) to carry out the monitoring, evaluation, or service review for which it was obtained; or

(iii) to a Federal, State or local government agency for the purposes of and subject to the conditions provided in paragraph (19) of this subdivision;

(7) a Federal, State, county or local health officer when such disclosure is mandated by Federal or State law;

(8) authorized agencies as defined by Social Services Law, section 371 and corporations incorporated or organized to receive youth for adoption or foster care, in connection with foster care or adoption of a youth. Such agency shall be authorized to redisclose such information only pursuant to the provisions of article 27-F of the Public Health Law or in accordance with the provisions of section 373-A of the Social Services Law;

(9) third-party reimbursers or their agents to the extent necessary to reimburse health care providers, including health facilities, for health services, provided that, where necessary, an otherwise appropriate authorization for such disclosure has been secured by the provider;

(10) an insurance institution, for other than the purpose set forth in paragraph (9) of this subdivision, provided the insurance institution secures a dated and written authorization that indicates that health care providers, health facilities, insurance institutions, and other persons are authorized to disclose information about the protected individual, the nature of the information to be disclosed, the purposes for which the information is to be disclosed and which is signed by:

(i) the protected individual;

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

(ii) if the protected individual lacks the capacity to consent, such other person authorized pursuant to law to consent for such individual; or

(iii) if the protected individual is deceased, the beneficiary or claimant for benefits under an insurance policy, a health services plan, or an employee welfare benefit plan as authorized in article 27-F of the Public Health Law;

(11) any person to whom disclosure is ordered by a court of competent jurisdiction pursuant to section 2785 of the Public Health Law;

(12) an employee or agent of the Division of Parole, Division of Probation and Correctional Alternatives, or Commission of Correction, in accordance with regulations promulgated by those agencies;

(13) a medical director of a local correctional facility in accordance with regulations promulgated by the facility operator. Redisclosure by the medical director is prohibited except as permitted under Public Health Law, article 27-F and its implementing regulations;

(14) a physician may disclose the confidential HIV-related information during contact notification pursuant to Public Health Law, article 27-F;

(15) a physician may, upon the informed consent of a youth or, if the youth lacks the capacity to consent, other person qualified to give consent on behalf of the youth, disclose confidential HIV-related information to a State, county, or local health officer for the purpose of reviewing the medical history of a youth to determine the fitness of the youth to attend school;

(16) confidential HIV-related information may be disclosed to a governmental agency or to authorized employees or agents of a governmental agency when the person providing health services is regulated by the governmental agency or when the governmental agency administers a health or social services program and when such employees or agents have access to records in the ordinary course of business and when access is reasonably necessary for supervision, monitoring, administration or provision of services. Such authorized employees or agents may include attorneys authorized by a government agency when access occurs in the ordinary course of providing legal services and is reasonably necessary for supervision, monitoring, administration or provision of services;

(17) confidential HIV-related information may be disclosed to authorized employees or agents of a person providing health services when such person is either regulated by a governmental agency or when a governmental agency administers a health or social services program, and when such employees or agents have access to records in the ordinary course of business and when access is reasonably necessary for supervision, monitoring, administration or provision of services and when such employee or agent has been authorized by the divi-

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

sion pursuant to this Part. Such authorized employees or agents may include attorneys authorized by persons providing health services when access occurs in the ordinary course of providing legal services and is reasonably necessary for supervision, monitoring, administration or provision of services;

(18) no person to whom confidential HIV-related information has been disclosed shall disclose the information to another person except as authorized by this Part; provided, however that the provisions of this Part shall not apply to the protected youth or a natural person who is authorized pursuant to law to consent to health care for the protected individual;

(19) nothing in this section shall limit a person's or agency's responsibility or authority to report, investigate, or redisclose, child protective and adult protective services information in accordance with title 6 of article 6 and titles 1 and 2 of article 9-B of the Social Services Law, or to provide or monitor the provision of child and adult protective or preventive services;

(20) confidential HIV-related information shall not be disclosed to a health care provider or health care facility if the sole purpose of disclosure is infection control when such provider or facility is regulated under the Public Health Law and required to implement infection control procedures pursuant to Department of Health regulations;

(21) confidential HIV information shall not be released pursuant to a subpoena. A court order pursuant to Public Health Law, section 2785 is required;

(22) where a youth has obtained personal confidential HIV-related information from an alternate anonymous testing site, sexually transmitted disease clinic or the youth's private physician, the youth may choose not to disclose any information to the division. However, all youth must be informed that disclosing such information confidentially with selected division staff may help him or her to manage the stress associated with HIV infection and also assist in planning for appropriate services in the community upon release. The test results will not be disclosed to any other person unless the youth, or other person authorized to give consent, gives prior written consent, pursuant to section 164.6 of this Part or unless disclosed pursuant to paragraph (23) of this subdivision. Youth must also be informed that once a positive test result is disclosed, it will be shared confidentially with a limited number of people directly involved with the youth's care and planning for care, as set forth below. These people will be limited to the following:

(i) the facility's medical staff caring for the youth (*i.e.*, physician's assistant, nurse, and the supervising physician of the physician's assistant or primary care physician serving the youth where the facility lacks other medical staff);

(ii) the facility director or, as applicable, the youth's foster parents and the division staff responsible for supervision of the youth's foster care case; and

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

(iii) the director of the division's Bureau of Health and Recreation Services;

(23) if, in the judgment of the facility health staff and facility director or, as applicable, the division staff responsible for supervision of the youth's foster care case, the results must be disclosed to additional party(ies), including the youth's parent(s) or guardian(s), the facility director or foster care case supervisor shall consult with the director of the Bureau of Health and Recreation Services. The director of the bureau must concur with the facility director or the division staff responsible for supervision of the youth's foster care case, if the information is to be disclosed to others not approved by the youth. In such cases the criterion used for overriding the youth's objections shall be that further disclosure of the information is critically important for the youth's physical or mental well-being, and that such benefit may not otherwise be obtained. At no time will confidential HIV-related information be disclosed in violation of Public Health Law, article 27-F. Any decision or action taken pursuant to this paragraph and the basis for such decision or action shall be recorded in the youth's medical file;

(24) where a youth who has acquired HIV-related information through a division employed physician or physician's assistant or through a physician maintained to serve division youth, either on a contract or fee-for-service basis, the youth must be advised that such information will be disclosed as set forth in paragraphs (22) and (23) of this subdivision; and

(25) where such access is necessary in furtherance of the duties of the Division's Office of Counsel, confidential HIV-related information may be disclosed to the Division's Office of Counsel and the New York State Attorney General's office.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 9. EXECUTIVE DEPARTMENT
SUBTITLE E. DIVISION FOR YOUTH
PART 168. STATE SCHOOLS AND CENTERS

Current through Current with amendments included in the New York State Register, Volume XXXI, Issue 9, dated March 4, 2009.

Section 168.7. Confidentiality of Division for Youth records

(a) Records or files of children who are or have been under the care or supervision of the Division for Youth may not be disclosed in whole or part to any person, agency or institution, other than the Division for Youth and New York State family courts, with the following exceptions:

(1) Records or pertinent parts thereof must be disclosed pursuant to Supreme Court order as authorized by Social Services Law article 6, section 372.

(2) Educational records may be disclosed to the extent that, when a child is attending or has attended a school located on the premises of a Division for Youth facility:

(i) all school records may be visually displayed to a child's parent, in person only;

(ii) the child's name, date of birth, a list of subjects studied, grades received, credits earned through academic/vocational courses, work experience or cooperative educational experience, record of attendance, last grade level achieved, previous school attended, standardized test scores, academic/vocational assessment results, Regents examination and Regents competency test results, general educational development test results, recommended educational program and grade placement, whether a committee on the handicapped has determined that the child has a handicapping condition, and immunization records only may be forwarded to the principal or guidance counselor of a school to which a child may be sent or desires to attend.

(3) Medical records may be disclosed to a physician at the written request of the physician and with the written approval of the child's parent or guardian; however, if the child is over the age of 18 years at the time of the request, only his or her approval shall be necessary, in addition to the physician's request.

(4) Records, or summaries of records, may be disclosed to the probation department of a Family Court of the State of New York, on request for use in accord with The Family Court Act, article 1, section 166, and article 7, sections 746(b), 783.

(5) The division is prohibited from making records available to a county probation depart-

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

ment, pursuant to section 372.3 of the Social Services Law.

(6) Information concerning a child's date of admission, release, revocation of release, and discharge only may be forwarded to the director of a New York social welfare district or State or Federal agency on request, when such information is necessary to enable said district or agency to determine that the child is under its jurisdiction, thereby enabling it to provide for a child's welfare and the necessities of life.

(7) Records pertaining to the vital statistics of children may be disclosed to law enforcement authorities when a child is absent from an institution without proper authorization or has violated a condition of release.

(8) Records may be made available to authorized child caring agencies, within and without the State, which have actual custody of the youth and request specific information in writing for the purpose of developing a program to meet his needs. However, when the request is made by an out-of-state child caring agency, the division shall request written confirmation, from the juvenile compact administrator for the state in which the requesting agency is located, that the agency is authorized to provide child care within that state and is in good standing. No record shall be made available until such information is received by the division in writing.

(9) Division records shall be made available to the Attorney General or his designee in furtherance of the duties of that office.

(10) Records pertaining to youths referred to the division as a condition of probation or pursuant to a continuance authorized by section 502 of the Executive Law shall be made available to the referring court or its probation department upon written request during the period of referral.

(b) When requests for records or other information concerning a child is received by any agent of the Division for Youth, and when such information is not included in the exceptions listed in paragraphs (1) through (10) of subdivision (a) of this section, the correct response shall be: "We are not authorized by law to disclose whether or not any individual was ever under our jurisdiction."

(c) No part of this section shall be construed to prohibit the free exchange of information within the Division for Youth, or between the division and New York family courts, when the best interest and treatment of the child is at issue, nor shall it serve to prohibit a bona fide study of information, with the approval of the executive deputy director and the deputy director for research of the Division for Youth and when guided by the superintendent or director of the institution, agency or facility at which the study is being conducted, with the stipulation that the name of no child shall be disclosed by the study group. In addition all such study groups shall sign an agreement to this effect before approval for such study shall be granted.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

(d) When any child who has been under the care of the Division for Youth, according to title II, article 19-G of the Executive Law, reaches the age of 20 years, and a child cared for by the Division for Youth, according to title III, article 19-G of the Executive Law, reaches the age of 21, all records possessed by said division shall be sealed and shall only be revealed by the division, pursuant to an order by the Supreme Court of the State of New York, except such records may be made available to the Attorney General of the State of New York in furtherance of the duties of that office.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

EXECUTIVE LAW § 501-c. Confidentiality

1. (a) Records or files of youths kept by the division for youth shall be deemed confidential and shall be safeguarded from coming to the knowledge of and from inspection or examination by any person other than one authorized to receive such knowledge or to make such inspection or examination: (i) by the division pursuant to its regulations; (ii) or by a judge of the court of claims when such records are required for the trial of a claim or other proceeding in such court; or (iii) by a federal court judge or magistrate, a justice of the supreme court, a judge of the county court or family court, or a grand jury when such records are required for a trial or proceeding in such court or grand jury. No person shall divulge the information thus obtained without authorization to do so by the division, or by such justice, judge or grand jury.

(b) The division shall not release information which would reasonably identify such youth as ever being in the custody of the division, except as provided in paragraph (a) of this subdivision.

(c) Nothing in this subdivision shall limit a person's or agency's responsibility or authority to report suspected child abuse or maltreatment pursuant to title six of article six of the social services law.

(d) Nothing in this subdivision shall be deemed to prevent access by a parent or legal guardian of a youth to records or files of such youth where access is otherwise specifically authorized by law.

2. Notwithstanding any other provision of this section, the official case records produced and maintained by the division shall be made available to a probation department, upon written request, where an order of the court has been issued directing such department to conduct an investigation pursuant to the provisions of sections 390.20 and 720.20 of the criminal procedure law and section 351.1 of the family court act. Any written requests for records shall be accompanied by a copy of the court order and shall request only a copy of the youth's official case record. The division shall be granted a minimum of ten days to produce such records. The division shall be required to forward only records less than three years old in its possession, or copies thereof, relating to a youth less than twenty-one years of age at the time of the request. The division may impose a fee upon a probation department for its costs in photocopying records provided under this subdivision. A probation department shall retain copies of records received or information obtained therein under the same conditions of confidentiality that apply to the investigation and any report on the investigation which was the basis for obtaining such records.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

Public Health Law
§ 2782. Confidentiality and disclosure

1. No person who obtains confidential HIV related information in the course of providing any health or social service or pursuant to a release of confidential HIV related information may disclose or be compelled to disclose such information, except to the following:

(a) the protected individual or, when the protected individual lacks capacity to consent, a person authorized pursuant to law to consent to health care for the individual;

(b) any person to whom disclosure is authorized pursuant to a release of confidential HIV related information;

(c) an agent or employee of a health facility or health care provider if (1) the agent or employee is permitted to access medical records, (2) the health facility or health care provider itself is authorized to obtain the HIV related information, and (3) the agent or employee provides health care to the protected individual, or maintains or processes medical records for billing or reimbursement;

(d) a health care provider or health facility when knowledge of the HIV related information is necessary to provide appropriate care or treatment to the protected individual, a child of the individual, a contact of the protected individual or a person authorized to consent to health care for such a contact;

(e) a health facility or health care provider, in relation to the procurement, processing, distributing or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, or other body fluids, for use in medical education, research, therapy, or for transplantation to individuals;

(f) health facility staff committees or accreditation or oversight review organizations authorized to access medical records; provided that such committees or organizations may only disclose confidential HIV related information: (1) back to the facility or provider of a health or social service; (2) to carry out the monitoring, evaluation, or service review for which it was obtained; or (3) to a federal, state or local government agency for the purposes of and subject to the conditions provided in subdivision six of this section;

(g) a federal, state, county or local health officer when such disclosure is mandated by federal or state law;

(h) an authorized agency in connection with foster care or adoption of a child. Such agency shall be authorized to redisclose such information only pursuant to this article or in accordance with the provisions of subdivision eight of section three hundred seventy-two and section three hun-

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

dred seventy-three-a of the social services law;

(i) third party reimbursers or their agents to the extent necessary to reimburse health care providers for health services; provided that, where necessary, an otherwise appropriate authorization for such disclosure has been secured by the provider;

(j) an insurance institution, for other than the purpose set forth in paragraph (i) of this subdivision, provided the insurance institution secures a dated and written authorization that indicates that health care providers, health facilities, insurance institutions, and other persons are authorized to disclose information about the protected individual, the nature of the information to be disclosed, the purposes for which the information is to be disclosed and which is signed by: (1) the protected individual; (2) if the protected individual lacks the capacity to consent, such other person authorized pursuant to law to consent for such individual; or (3) if the protected individual is deceased, the beneficiary or claimant for benefits under an insurance policy, a health services plan, or an employee welfare benefit plan as defined in 29 U.S.C. 1002(1), covering such protected individual;

(k) any person to whom disclosure is ordered by a court of competent jurisdiction pursuant to section twenty-seven hundred eighty-five of this article;

(l) an employee or agent of the division of parole, in accordance with paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, to the extent the employee or agent is authorized to access records containing such information in order to carry out the division's functions, powers and duties with respect to the protected individual, pursuant to section two hundred fifty-nine-a of the executive law;

(m) an employee or agent of the division of probation and correctional alternatives or any local probation department, in accordance with paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, to the extent the employee or agent is authorized to access records containing such information in order to carry out the division's or department's functions, powers and duties with respect to the protected individual, pursuant to articles twelve and twelve-A of the executive law;

(n) a medical director of a local correctional facility as defined in section forty of the correction law, in accordance with paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, to the extent the medical director is authorized to access records containing such information in order to carry out his or her functions, powers and duties with respect to the protected individual; or

(o) an employee or agent of the commission of correction, in accordance with paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, to the extent the employee or agent is authorized to access records containing such information in order to carry out the commission's functions, powers and duties with respect to the protected individual, pursuant

© 2009 Thomson Reuters West. No Claim to Orig. US Gov. Works.

to article three of the correction law.

(p) a law guardian, appointed to represent a minor pursuant to the social services law or the family court act, with respect to confidential HIV related information relating to the minor and for the purpose of representing the minor. If the minor has the capacity to consent, the law guardian may not redisclose confidential HIV related information without the minor's permission. If the minor lacks capacity to consent, the law guardian may redisclose confidential HIV related information for the sole purpose of representing the minor. This paragraph shall not limit a law guardian's ability to seek relief under section twenty-seven hundred eighty-five of this chapter.

2. A state, county or local health officer may disclose confidential HIV related information when:

(a) disclosure is specifically authorized or required by federal or state law; or

(b) disclosure is made pursuant to a release of confidential HIV related information; or

(c) disclosure is requested by a physician pursuant to subdivision four of this section; or

(d) disclosure is authorized by court order pursuant to the provisions of section twenty-seven hundred eighty-five of this article.

3. No person to whom confidential HIV related information has been disclosed pursuant to this article shall disclose the information to another person except as authorized by this article, provided, however, that the provisions of this subdivision shall not apply:

(a) to the protected individual; or

(b) to a natural person who is authorized pursuant to law to consent to health care for the protected individual; or

(c) to a protected individual's foster parent as defined in section three hundred seventy-one of the social services law and subject to regulations promulgated pursuant to paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, for the purpose of providing care, treatment or supervision of the protected individual; or

(d) a prospective adoptive parent as specified in section three hundred seventy-three-a of the social services law and subject to regulations promulgated pursuant to paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article with whom a child who is the protected individual has been placed for adoption; or

(e) to a relative or other person legally responsible to whom a child who is the protected individual is to be placed or discharged pursuant to section ten hundred seventeen or ten hundred fifty-

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

five of the family court act and subject to regulations promulgated pursuant to paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, for the purpose of providing care, treatment or supervision of the protected individual.

4. (a) A physician may disclose confidential HIV related information under the following conditions:

(1) disclosure is made to a contact, to a public health officer for the purpose of making the disclosure to said contact and pursuant to section twenty-one hundred thirty of this chapter; or

(2) the physician believes disclosure is medically appropriate and there is a significant risk of infection to the contact; and

(3) the physician has counseled the protected individual regarding the need to notify the contact; and

(4) the physician has informed the protected individual of his or her intent to make such disclosure to a contact, the physician's responsibility to report the infected individual's case pursuant to section twenty-one hundred thirty of this chapter and has given the protected individual the opportunity to express a preference as to whether disclosure should be made by the physician directly or to a public health officer for the purpose of said disclosure. If the protected individual expresses a preference for disclosure by a public health officer, the physician shall honor such preference.

(5) If a physician chooses to make a notification pursuant to this section, he or she shall report to the municipal health commissioner of [FN1] district health officer on his or her efforts to notify the contacts of the protected individual. Such report shall be in a manner and on forms prescribed by the commissioner and shall include the identity of the protected individual and any contacts as well as information as to whether the contacts were successfully notified.

(6) Within a reasonable time of receiving a report that a physician or his or her designated agent did not notify or verify notification of contacts provided by the protected individual, the health commissioner or district health officer of the municipality from which the report originates shall take reasonable measures to notify such contacts and otherwise comply with the provisions of this chapter.

(b) When making such disclosures to the contact, the physician or public health officer shall provide or make referrals for the provision of the appropriate medical advice and counseling for coping with the emotional consequences of learning the information and for changing behavior to prevent transmission or contraction of HIV infection. The physician or public health officer shall not disclose the identity of the protected individual or the identity of any other contact. A physician or public health officer making a notification pursuant to this subdivision shall make such disclosure in person, except where circumstances reasonably prevent doing so.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

(c) A physician or public health officer shall have no obligation to identify or locate any contact except as provided pursuant to title three of article twenty-one of this chapter.

(d) A physician may, upon the consent of a parent or guardian, disclose confidential HIV related information to a state, county, or local health officer for the purpose of reviewing the medical history of a child to determine the fitness of the child to attend school.

(e) A physician may disclose confidential HIV related information pertaining to a protected individual to a person (known to the physician) authorized pursuant to law to consent to health care for a protected individual when the physician reasonably believes that: (1) disclosure is medically necessary in order to provide timely care and treatment for the protected individual; and (2) after appropriate counseling as to the need for such disclosure, the protected individual will not inform a person authorized by law to consent to health care; provided, however, that the physician shall not make such disclosure if, in the judgment of the physician: (A) the disclosure would not be in the best interest of the protected individual; or (B) the protected individual is authorized pursuant to law to consent to such care and treatment. Any decision or action by a physician under this paragraph, and the basis therefor, shall be recorded in the protected individual's medical record.

5. (a) Whenever disclosure of confidential HIV related information is made pursuant to this article, except for disclosures made pursuant to paragraph (a) of subdivision one of this section or paragraph (a) or (e) of subdivision four of this section, such disclosure shall be accompanied or followed by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for further disclosure." An oral disclosure shall be accompanied or followed by such a notice within ten days.

(b) Except for disclosures made pursuant to paragraph (c) of subdivision one of this section, or to persons reviewing information or records in the ordinary course of ensuring that a health facility is in compliance with applicable quality of care standards or any other authorized program evaluation, program monitoring or service review, or to governmental agents requiring information necessary for payments to be made on behalf of patients or clients pursuant to contract or in accordance to law, a notation of all such disclosures shall be placed in the medical record of a protected individual, who shall be informed of such disclosures upon request; provided, however, that for disclosures made to insurance institutions such a notation need only be entered at the time the disclosure is first made.

6. (a) The provisions of this subdivision shall apply where a provider of a health or social service

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

possesses confidential HIV related information relating to individuals who are recipients of the service, and a federal, state or local government agency supervises or monitors the provider or administers the program under which the service is provided.

(b) Confidential HIV related information relating to a recipient of such service may be disclosed in accordance with regulations promulgated pursuant to paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article to an authorized employee or agent of such provider or government agency, when reasonably necessary for such supervision, monitoring, administration, or provision of such service. The term "authorized employee or agent", as used in this subdivision shall only include any employee or agent who would, in the ordinary course of business of the provider or government agency, have access to records relating to the care of, treatment of, or provision of a health or social service to the protected individual.

7. Nothing in this section shall limit a person's or agency's responsibility or authority to report, investigate, or redisclose, child protective and adult protective services information in accordance with title six of article six and titles one and two of article nine-B of the social services law, or to provide or monitor the provision of child and adult protective or preventive services.

8. Confidential HIV related information shall be recorded in the medical record of the protected individual. The provisions of this section shall not prohibit the listing of acquired immune deficiency syndrome, HIV related illness or HIV infection in a certificate of death, autopsy report or related documents prepared pursuant to article forty-one of this chapter or other applicable laws, ordinances, rules or regulations relating to the documentation of cause of death, nor shall this section be construed to modify any laws, ordinances, rules or regulations relative to access to death certificates, autopsy reports or such other related documents. Under no circumstances shall confidential HIV related information be disclosable pursuant to article six of the public officers law. Notwithstanding the foregoing, confidential HIV information obtained pursuant to section 390.15 of the criminal procedure law or section 347.1 of the family court act by either court order or consent of the protected individual shall not be recorded in the medical record of the protected individual unless he or she consents to the recording of such information in a written statement containing the relevant information specified in subdivision two of section two thousand seven hundred eighty-one of this article.

9. Confidential HIV related information shall be disclosed upon the request of the health care worker HIV/HBV advisory panel, established pursuant to article twenty-seven-DD of this chapter, to the panel or its designee only when reasonably necessary for the evaluation of a worker who has voluntarily sought the panel's review.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER B. PUBLIC ASSISTANCE
ARTICLE 1. DETERMINATION OF ELIGIBILITY--GENERAL
PART 357. CONFIDENTIAL NATURE OF RECORDS

Current through Current with amendments included in the New York State Register, Volume XXXI, Issue 9, dated March 4, 2009.

Section 357.3. Basis for disclosure of information

(a) Safeguards in disclosing information. Information shall be released to another agency or person only when the public welfare official providing such data is assured that:

(1) the confidential character of the information will be maintained;

(2) the information will be used for the purposes for which it is made available, such purposes to be reasonably related to the purposes of the public welfare program and the function of the inquiring agency; and

(3) the information will not be used for commercial or political purposes.

(b) Disclosure of medical information.

(1) Upon the transfer of a foster child to the care of another authorized agency, the former agency must provide to the receiving agency the child's comprehensive health history, both physical and mental, to the extent it is available.

(2) To the extent they are available, the comprehensive health history of the child and of his or her biological parents and the health care needs of the child must be provided by an authorized agency to foster parents at the time of the child's placement in foster care. In all cases, information identifying the biological parents must be removed from the comprehensive medical history.

(3) To the extent it is available, the comprehensive health history, both physical and mental, of a child legally freed for adoption and of his or her biological parents must be provided by an authorized agency to the child's prospective adoptive parent(s). Prospective adoptive parent means an individual who meets criteria as defined in section 421.16 of this Title and who has indicated an interest in adopting a particular child, and for whom the authorized agency has begun the placement agreement process in accordance with section 421.18 of this Title. In the case of finalized adoptions, such information must be provided upon request to the

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

child's adoptive parents. In all cases, information identifying the biological parents must be removed from the comprehensive health history.

(4) To the extent it is available, the comprehensive health history, including both physical and mental, of the child in foster care and of his or her biological parents must be provided by an authorized agency at no cost to such child when discharged to his or her own care. Such information must include the names and addresses of the child's health care providers.

(5) To the extent it is available, the comprehensive health history of a child in foster care must be provided to the child's parents or guardian when the child is discharged to their care, except that confidential HIV-related information must not be disclosed without a written release from the child if the child has the capacity to consent as defined in section 360-8.1(a)(8) of this Title and in article 27-F of the Public Health Law. The conditions for the written release authorizing such disclosure are described in section 360- 8.1(a)(8) of this Title and in article 27-F of the Public Health Law. The term confidential HIV-related information is defined in section 360- 8.1(a)(5) of this Title and in article 27-F of the Public Health Law.

(6) To the extent it is available, the comprehensive health history, both physical and mental, of any adopted former foster child and of his or her biological parents must be provided by an authorized agency to the adopted former foster child upon request. In all cases, information identifying the biological parents must be removed from the comprehensive health history.

(7) For the purposes of this subdivision, the comprehensive health history must include, but is not limited to, conditions or diseases believed to be hereditary, where known; drugs or medication taken during pregnancy by the child's biological mother, where known; immunizations received by the child while in foster care and prior to placement in care, where known; medications dispensed to the child while in care and prior to placement in care, where known; allergies the child is known to have exhibited while in care and prior to placement in care, where known; diagnostic tests, including developmental or psychological tests and evaluations given to the child while in care and prior to placement in care, where known, and their results, laboratory tests for HIV, where known, and their results; and any follow-up treatment provided to the child prior to placement in care, where known, or provided to the child while in care, or still needed by the child.

(c) Disclosure to applicant, recipient, or person acting in his behalf.

(1) The case record shall be available for examination at any reasonable time by the applicant or recipient or his authorized representative upon reasonable notice to the local district. The only exceptions to access are:

(i) those materials to which access is governed by separate statutes, such as child welfare, foster care, adoption or child abuse or neglect or any records maintained for the purposes

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

of the Child Care Review Service;

(ii) those materials being maintained separate from public assistance files for purposes of criminal prosecution and referral to the district attorney' s office; and

(iii) the county attorney or welfare attorney's files.

(2) Information may be released to a person, a public official, or another social agency from whom the applicant or recipient has requested a particular service when it may properly be assumed that the client has requested the inquirer to act in his behalf and when such information is related to the particular service requested.

(d) Disclosure to relatives and other legally responsible persons.

(1) To the extent available and upon request, an authorized agency must provide a relative or other legally responsible person with whom a child is placed, or to whom a child is discharged or released, by the family court pursuant to section 1017 or 1054 of the Family Court Act, but who is not a foster parent for the child, with the same background information regarding the child as is provided to a foster parent with whom a child is placed. Such information, as available, must include the child's medical history and any other information which is provided to a foster parent as necessary for the child's health, safety and welfare pursuant to this section, section 443.2 of this Title, and any other applicable regulations of the Office of Children and Family Services. However, if the child's medical history includes confidential HIV-related information, such information must not be provided to the relative or other legally responsible person without a written release from:

(i) the child, if the child has capacity to consent as defined in section 360- 8.1(a)(8) of this Title and in article 27-F of the Public Health Law; or

(ii) a person authorized to consent to health care for the child, if the child lacks capacity to consent.

(2) A social services district is required, under section 132 of the Social Services Law, to investigate the ability and willingness of relatives, and the liability of legally responsible relatives, to contribute to the support of an applicant for or recipient of public assistance or care. In regard to these investigations, such a relative is a person considered entitled, under section 136 of the Social Services Law, to necessary and appropriate information regarding the applicant or recipient. Information concerning the applicant' s or recipient's needs and basic circumstances may be disclosed to such a relative to the extent necessary to discuss contributions of support from that relative. However, confidential HIV-related information may not be disclosed to such a relative without a written release from:

(i) the applicant or recipient, if the applicant or recipient has capacity to consent as de-

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

fined in section 360-8.1(a)(8) of this Title and in article 27- F of the Public Health Law; or

(ii) from a person authorized to consent to health care for the applicant or recipient, if the applicant or recipient lacks capacity to consent.

(3) The social services district or other authorized agency must, in writing, inform the relative or other legally responsible person receiving information under this subdivision, of the confidential nature of the information and of any restrictions against redisclosure of such information. In the case of confidential HIV-related information, the warning statement against redisclosure set forth in section 360-8.1(h) of this Title and in article 27-F of the Public Health Law must be provided to the person receiving confidential HIV-related information.

(4) The term confidential HIV-related information is defined in section 360- 8.1(a)(5) of this Title and in article 27-F of the Public Health Law. The conditions for the written release authorizing disclosure of such information are set forth in section 360-8.1(g) of this Title and in article 27-F of the Public Health Law.

(e) Disclosure to Federal, State or local official.

(1) Information may be disclosed to any properly constituted authority. This includes a legislative body or committee upon proper legislative order, an administrative board charged with investigating or appraising the operation of public welfare, law enforcement officers, grand juries, probation and parole officers, government auditors, and members of public welfare boards, as well as the administrative staff of public welfare agencies.

(2) Information may be released to a selective service board when such information is necessary in order that the board may arrive at a valid and consistent decision regarding dependency.

(3) A social services official must disclose to a Federal, State or local law enforcement officer, upon request of the officer, the current address of any recipient of family assistance, or safety net assistance if the duties of the officer include the location or apprehension of the recipient and the officer furnishes the social services official with the name of the recipient and notifies the agency that such recipient is fleeing to avoid prosecution, custody or confinement after conviction, under the laws of the place from which the recipient is fleeing for a crime or an attempt to commit a crime which is a felony under the laws of the place from which the recipient is fleeing, or which, in the case of the state of New Jersey, is a high misdemeanor under the laws of that state, or is violating a condition of probation or parole imposed under a Federal or State law or has information that is necessary for the officer to conduct his or her official duties. In a request for disclosure pursuant to this paragraph, such law enforcement officer must endeavor to include identifying information to help ensure that the social services official discloses only the address of the person sought and not the address of a person

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

with the same or similar name.

(4) Nothing in this Part precludes a social services official from reporting to an appropriate agency or official, including law enforcement agencies or officials, known or suspected instances of physical or mental injury, sexual abuse or exploitation, sexual contact with a minor or negligent treatment or maltreatment of a child of which the social services official becomes aware of in the administration of public assistance and care.

(5) Nothing in this Part precludes a social services official from communicating with the Federal Immigration and Naturalization Service regarding the immigration status of any individual.

(f) Disclosure upon subpoena by court.

(1) When a public assistance record is subpoenaed by court, the public welfare agency shall immediately consult its legal counsel before producing any record or revealing any information or giving any testimony.

(2) When the subpoena is for a purpose directly related to the administration of public assistance or protection of the child, the agency before complying with the subpoena shall endeavor to get in touch with the client whose record is involved or his attorney and secure permission to reveal the contents of the record which relate to the administration of public assistance.

(3) In the event that the subpoena is for a purpose not directly related to the administration of public assistance or the protection of a child, the agency shall plead, in support of its request to withhold information, that the Social Security Act, the Social Services Law and the regulations of the State Department of Social Services prohibit disclosure of confidential information contained in records and files, including names of clients. The agency will be governed by the final order of the court after this plea is made.

(g) Disclosure to bona fide news disseminating firm. The written assurance required by section 136 of the Social Services Law that the names and addresses of applicants and recipients of assistance shall not be published, shall be obtained by the public welfare official before allowing examination of records of disbursements by that bona fide news disseminating firm.

(h) Disclosure of confidential HIV-related information.

(1) Notwithstanding any other provision of any law or regulation, confidential HIV-related information concerning persons claiming disability benefits under the provisions of titles II and XVI of the Social Security Act may be disclosed to persons employed by or acting on behalf of the department's office of disability determinations engaged in the conduct of processing such claims on the basis of a general medical release in the form approved by the So-

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

cial Security Administration of the United States Department of Health and Human Services. The employees and agents of the office of disability determinations, including providers of clinical laboratory services, consultative medical examinations or claimant-related medical information, to the extent they have acted in accordance with department procedures and instructions, will be held harmless and indemnified by the department for any liability for the disclosure or redisclosure of any HIV- related information when such information is solicited by or provided to the office of disability determination.

(2) All medical information, including confidential HIV-related information, solicited by or provided to the office of disability determinations for the purpose of determining a person's disability will be treated as confidential and this information must not be disclosed except as prescribed by the regulations of the Secretary of the United States Department of Health and Human Services.

(3) The term confidential HIV-related information is defined in section 360- 8.1 of this Title.

(i) Disclosure of domestic violence related information.

(1) Information with respect to victims of domestic violence collected as a result of procedures for domestic violence screening, assessment, referrals and waivers pursuant to Part 351 of this Title shall not be released to any outside party or parties or other government agencies unless the information is required to be disclosed by law, or unless authorized in writing by the public assistance applicant or recipient.

(2) Employees of the office, social services district or any agency providing domestic violence liaison services, consistent with applicable statute and regulation, may have access to client identifiable information maintained by a domestic violence liaison or by the welfare management system only when the employees' specific job responsibilities cannot be accomplished without access to client identifiable information.

(3) Each social service district and agency providing domestic violence liaison services, with access to the welfare management system, must develop and implement policies and practices to ensure the maintenance of confidential individual information.

(j) Disclosure of education information. To the extent available, an authorized agency must provide a copy of a foster child's education record at no cost to the child when such foster child is discharged to his or her own care. For the purposes of this subdivision, the education record of a foster child includes the names and addresses of the child's educational providers; the child's grade level performance; assurances that the child's placement in foster care took into account proximity to the school in which the child was enrolled at the time of placement; and any other relevant education information concerning the child.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

Effective: August 6, 2002

Social Services Law
§ 372. Records and reports

1. Every court, and every public board, commission, institution, or officer having powers or charged with duties in relation to abandoned, delinquent, destitute, neglected or dependent children who shall receive, accept or commit any child shall provide and keep a record showing:

(a) the full and true name of the child,

(b) his sex and date and place of birth, if ascertainable, or his apparent age,

(c) the full and true names and places of birth of his parents, and their actual residence if living, or their latest known residence, if deceased or whereabouts unknown and the name and actual residence of any other person having custody of the child, as nearly as the same can reasonably be ascertained,

(d) the religious faith of the parents and of the child,

(e) the name and address of any person, agency, institution or other organization to which the child is committed, placed out, boarded out, or otherwise given into care, custody or control,

(f) the religious faith and occupation of the head or heads of the family with whom the child is placed out or boarded out and their relationship, if any, to the child,

(g) if any such child shall die, the date and cause of death and place of burial,

(h) any further disposition or change in care, custody or control of the child,

(i) the date or dates of reception and of any subsequent disposition or change in care, custody or control and, in case of adoption, the name and title of the judge or surrogate making the order of adoption, the date of such order and the date and place of filing of such order,

(j) the reasons for any act performed in reference to such child herein required to be recorded, together with such further information as the department may require; and shall make to the department upon blanks provided by the department reports of each such child placed out, or boarded out, containing the information herein required to be kept; and shall furnish such information to any authorized agency to which any such child shall be committed or otherwise given into custody.

2. Every charitable, eleemosynary, reformatory, or correctional institution, public or private, incorporated or unincorporated, and every agency, association, corporation, institution, society or

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

other organization which shall receive, accept, or admit any child whether or not in receipt of payments from public funds for the support of such child shall provide and keep a record as described in subdivision one, and also showing how, by whom and for what reason such child shall have been given into its custody or committed to it and shall make reports of each such child to the department upon blanks provided by the department giving all the information required by subdivision one to be recorded together with such further information as the department may require. Except as to children placed out, boarded out or surrendered or for whom guardianship is accepted or adoption provided, the requirement of this section shall not apply to hospitals, day nurseries, eleemosynary day schools, and summer and vacation homes and camps, or to institutions for the care of convalescent, anaemic, under-nourished or cardiac children, preventoria, working boys' homes, emergency shelters and schools for the blind and for the deaf, but all such hospitals, homes and institutions shall keep such records and make to the department such reports as the department may require.

3. Such records maintained by the department or an authorized agency, including a local social services district, regarding such children are confidential, provided, however, that such records are subject to the provisions of article thirty-one of the civil practice law and rules. When either the subject foster child, or such child's parent, or such child's guardian if any, is not a party to the action, a copy of the notice or motion for discovery shall be served upon such parent, guardian, and child and, if the child is still a minor, the child's law guardian. Such persons may thereafter appear in the action with regard to such discovery. Where no action is pending, upon application by a parent, relative or legal guardian of such child or by an authorized agency, after due notice to the institution or authorized agency affected and hearing had thereon, the supreme court may by order direct the officers of such institution or authorized agency to furnish to such parent, relative, legal guardian or authorized agency such extracts from the record relating to such child as the court may deem proper. The department through its authorized agents and employees may examine at all reasonable times the records required by this section to be kept.

4. (a) All such records relating to such children shall be open to the inspection of the board and the department at any reasonable time, and the information called for under this section and such other data as may be required by the department shall be reported to the department, in accordance with the regulations of the department. Such records kept by the department shall be deemed confidential and shall be safeguarded from coming to the knowledge of and from inspection or examination by any person other than one authorized, by the department, by a judge of the court of claims when such records are required for the trial of a claim or other proceeding in such court or by a justice of the supreme court, or by a judge of the family court when such records are required for the trial of a proceeding in such court, after a notice to all interested persons and a hearing, to receive such knowledge or to make such inspection or examination. No person shall divulge the information thus obtained without authorization so to do by the department, or by such judge or justice.

(b)(i) Notwithstanding any inconsistent provision of law to the contrary, records relating to children kept pursuant to this section shall be made available to officers and employees of the state

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

comptroller or of the city comptroller of the city of New York, or of the county officer designated by law or charter to perform the auditing function in any county not wholly contained within a city, for the purposes of a duly authorized performance audit, provided that such comptroller shall have certified to the keeper of such records that he or she has instituted procedures developed in consultation with the department to limit access to client-identifiable information to persons requiring such information for purposes of the audit, that such persons shall not use such information in any way except for purposes of the audit and that appropriate controls and prohibitions are imposed on the dissemination of client-identifiable information obtained in the conduct of the audit. Information pertaining to the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to such child or the child's family shall not be made available to such officers and employees unless disclosure of such information is absolutely essential to the specific audit activity and the department gives prior written approval.

(ii) Any failure to maintain the confidentiality of client-identifiable information shall subject such comptroller or officer to denial of any further access to records until such time as the audit agency has reviewed its procedures concerning controls and prohibitions imposed on the dissemination of such information and has taken all reasonable and appropriate steps to eliminate such lapses in maintaining confidentiality to the satisfaction of the department. The department shall establish the grounds for denial of access to records contained under this section and shall recommend, as necessary, a plan of remediation to the audit agency. Except as provided in this section, nothing in this paragraph shall be construed as limiting the powers of such comptroller or officer to access records which he is otherwise authorized to audit or obtain under any other applicable provision of law. Any person given access to information pursuant to this paragraph who releases data or information to persons or agencies not authorized to receive such information shall be guilty of a class A misdemeanor.

4-a. Notwithstanding any provisions of law to the contrary, social services districts shall provide a written summary of services rendered to a child upon the request of a probation service conducting an investigation pursuant to the provisions of section 351.1 of the family court act. Information provided to a probation service pursuant to the provisions of this subdivision shall be maintained by such service according to the provisions of subdivision five of section 351.1 of the family court act.

4-b. Notwithstanding any other provision of law, foster care information governed by this section may be released by the department or an authorized agency to a person, agency or organization for purposes of a bona fide research project. Identifying information shall not be made available, however, unless it is absolutely essential to the research purpose and the department gives prior approval. Information released pursuant to this subdivision shall not be re-disclosed except as otherwise permitted by law and upon the approval of the department.

5. The requirements of this section to keep records and make reports shall not apply to the birth parent or parents, or relatives within the second degree of such parents. The reception of a child,

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

or the power to receive the same, shall not make this section applicable to a humane society, or to a society for the prevention of cruelty to children.

6. The provisions of this section as to records and reports to the department shall apply also to the placing out, adoption or boarding out of a child and the acceptance of guardianship or of surrender of a child.

7. An authorized agency as defined in paragraphs (a) and (b) of subdivision ten of section three hundred seventy-one of this chapter or any primary or secondary school or an office of the division for youth, except agencies operating pursuant to article nineteen-H of the executive law, who shall receive, accept, enroll or commit any child under such circumstances as shall reasonably indicate that such child may be a missing person shall make inquiries of each such child to the division of criminal justice services in a manner prescribed by such division; provided that as used in this subdivision a court shall not be included within the definition of an authorized agency. If such child appears to match a child registered with the statewide central register for missing children as described in section eight hundred thirty-seven-e of the executive law, or one registered with the national crime information center register, such agency shall immediately contact the local law enforcement agency.

8. In any case where a child is to be placed with or discharged to a relative or other person legally responsible pursuant to section ten hundred seventeen or ten hundred fifty-five of the family court act, such relative or other person shall be provided with such information by an authorized agency as is provided to foster parents pursuant to this section and applicable regulations of the department.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

Social Services Law
§ 422. Statewide central register of child abuse and maltreatment

1. There shall be established in the office of children and family services a statewide central register of child abuse and maltreatment reports made pursuant to this title.

2. (a) The central register shall be capable of receiving telephone calls alleging child abuse or maltreatment and of immediately identifying prior reports of child abuse or maltreatment and capable of monitoring the provision of child protective service twenty-four hours a day, seven days a week. To effectuate this purpose, but subject to the provisions of the appropriate local plan for the provision of child protective services, there shall be a single statewide telephone number that all persons, whether mandated by the law or not, may use to make telephone calls alleging child abuse or maltreatment and that all persons so authorized by this title may use for determining the existence of prior reports in order to evaluate the condition or circumstances of a child. In addition to the single statewide telephone number, there shall be a special unlisted express telephone number and a telephone facsimile number for use only by persons mandated by law to make telephone calls, or to transmit telephone facsimile information on a form provided by the commissioner, alleging child abuse or maltreatment, and for use by all persons so authorized by this title for determining the existence of prior reports in order to evaluate the condition or circumstances of a child. When any allegations contained in such telephone calls could reasonably constitute a report of child abuse or maltreatment, such allegations shall be immediately transmitted orally or electronically by the department to the appropriate local child protective service for investigation. The inability of the person calling the register to identify the alleged perpetrator shall, in no circumstance, constitute the sole cause for the register to reject such allegation or fail to transmit such allegation for investigation. If the records indicate a previous report concerning a subject of the report, the child alleged to be abused or maltreated, a sibling, other children in the household, other persons named in the report or other pertinent information, the appropriate local child protective service shall be immediately notified of the fact, except as provided in subdivision eleven of this section. If the report involves either (i) suspected physical injury as described in paragraph (i) of subdivision (e) of section ten hundred twelve of the family court act or sexual abuse of a child or the death of a child or (ii) suspected maltreatment which alleges any physical harm when the report is made by a person required to report pursuant to section four hundred thirteen of this title within six months of any other two reports that were indicated, or may still be pending, involving the same child, sibling, or other children in the household or the subject of the report, the department shall identify the report as such and note any prior reports when transmitting the report to the local child protective services for investigation.

(b) Any telephone call made by a person required to report cases of suspected child abuse or maltreatment pursuant to section four hundred thirteen of this chapter containing allegations, which if true would constitute child abuse or maltreatment shall constitute a report and shall be immediately transmitted orally or electronically by the department to the appropriate local child protective service for investigation.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

(c) Whenever a telephone call to the statewide central register described in this section is received by the department, and the department finds that the person allegedly responsible for abuse or maltreatment of a child cannot be a subject of a report as defined in subdivision four of section four hundred twelve of this chapter, but believes that the alleged acts or circumstances against a child described in the telephone call may constitute a crime or an immediate threat to the child's health or safety, the department shall convey by the most expedient means available the information contained in such telephone call to the appropriate law enforcement agency, district attorney or other public official empowered to provide necessary aid or assistance.

(d) [Repealed by L.2008, c. 323, § 17, eff. Jan. 17, 2009.] A telephone call made to the statewide central register described in this section alleging facts that support a finding of the institutional neglect of a child in residential care pursuant to subdivision ten of section four hundred twelve of this article and that, if true, clearly could not support a finding that the child is an abused or neglected child in residential care, shall not constitute a report, and shall immediately be transmitted to the state agency responsible for the operation or supervision of the residential facility or program and, in the case of a facility operated or certified by an office of the state department of mental hygiene, to the state commission on quality of care for the mentally disabled, for appropriate action.

3. The central register shall include but not be limited to the following information: all the information in the written report; a record of the final disposition of the report, including services offered and services accepted; the plan for rehabilitative treatment; the names and identifying data, dates and circumstances of any person requesting or receiving information from the register; and any other information which the commissioner believes might be helpful in the furtherance of the purposes of this chapter.

4. (A) Reports made pursuant to this title as well as any other information obtained, reports written or photographs taken concerning such reports in the possession of the department, local departments, or the commission on quality of care for the mentally disabled, shall be confidential and shall only be made available to:

(a) a physician who has before him or her a child whom he or she reasonably suspects may be abused or maltreated;

(b) a person authorized to place a child in protective custody when such person has before him or her a child whom he or she reasonably suspects may be abused or maltreated and such person requires the information in the record to determine whether to place the child in protective custody;

(c) a duly authorized agency having the responsibility for the care or supervision of a child who is reported to the central register of abuse and maltreatment;

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

(d) any person who is the subject of the report or other persons named in the report;

(e) a court, upon a finding that the information in the record is necessary for the determination of an issue before the court;

(f) a grand jury, upon a finding that the information in the record is necessary for the determination of charges before the grand jury;

(g) any appropriate state legislative committee responsible for child protective legislation;

(h) any person engaged in a bona fide research purpose provided, however, that no information identifying the subjects of the report or other persons named in the report shall be made available to the researcher unless it is absolutely essential to the research purpose and the department gives prior approval;

(i) a provider agency as defined by subdivision three of section four hundred twenty-four-a of this chapter, or a licensing agency as defined by subdivision four of section four hundred twenty-four-a of this chapter, subject to the provisions of such section;

(j) the state commission on quality of care for the mentally disabled in connection with an investigation being conducted by the commission pursuant to article forty-five of the mental hygiene law;

(k) a probation service conducting an investigation pursuant to article three or seven or section six hundred fifty-three of the family court act where there is reason to suspect the child or the child's sibling may have been abused or maltreated and such child or sibling, parent, guardian or other person legally responsible for the child is a person named in an indicated report of child abuse or maltreatment and that such information is necessary for the making of a determination or recommendation to the court; or a probation service regarding a person about whom it is conducting an investigation pursuant to article three hundred ninety of the criminal procedure law, or a probation service or the state division of parole regarding a person to whom the service or division is providing supervision pursuant to article sixty of the penal law or section two hundred fifty-nine-a of the executive law, where the subject of investigation or supervision has been convicted of a felony under article one hundred twenty, one hundred twenty-five or one hundred thirty-five of the penal law or any felony or misdemeanor under article one hundred thirty, two hundred thirty-five, two hundred forty-five, two hundred sixty or two hundred sixty-three of the penal law, or has been indicted for any such felony and, as a result, has been convicted of a crime under the penal law, where the service or division requests the information upon a certification that such information is necessary to conduct its investigation, that there is reasonable cause to believe that the subject of an investigation is the subject of an indicated report and that there is reasonable cause to believe that such records are necessary to the investigation by the probation service or the state division of parole, provided, however, that only indicated reports shall be furnished pursuant to this subdivision;

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

(l) a district attorney, an assistant district attorney or investigator employed in the office of a district attorney, a sworn officer of the division of state police, of the regional state park police, of a city police department, or of a county, town or village police department or county sheriff's office or department when such official requests such information stating that such information is necessary to conduct a criminal investigation or criminal prosecution of a person, that there is reasonable cause to believe that such person is the subject of a report, and that it is reasonable to believe that due to the nature of the crime under investigation or prosecution, such person is the subject of a report, and that it is reasonable to believe that due to that nature of the crime under investigation or prosecution, such records may be related to the criminal investigation or prosecution;

(m) the New York city department of investigation provided however, that no information identifying the subjects of the report or other persons named in the report shall be made available to the department of investigation unless such information is essential to an investigation within the legal authority of the department of investigation and the state department of social services gives prior approval;

(n) chief executive officers of authorized agencies, directors of day care centers and directors of facilities operated or supervised by the department of education, the division for youth, the office of mental health or the office of mental retardation and developmental disabilities, in connection with a disciplinary investigation, action, or administrative or judicial proceeding instituted by any of such officers or directors against an employee of any such agency, center or facility who is the subject of an indicated report when the incident of abuse or maltreatment contained in the report occurred in the agency, center, facility or program, and the purpose of such proceeding is to determine whether the employee should be retained or discharged; provided, however, a person given access to information pursuant to this subparagraph (n) shall, notwithstanding any inconsistent provision of law, be authorized to redisclose such information only if the purpose of such redisclosure is to initiate or present evidence in a disciplinary, administrative or judicial proceeding concerning the continued employment or the terms of employment of an employee of such agency, center or facility who has been named as a subject of an indicated report and, in addition, a person or agency given access to information pursuant to this subparagraph (n) shall also be given information not otherwise provided concerning the subject of an indicated report where the commission of an act or acts by such subject has been determined in proceedings pursuant to article ten of the family court act to constitute abuse or neglect;

(o) a provider or coordinator of services to which a child protective service or social services district has referred a child or a child's family or to whom the child or the child's family have referred themselves at the request of the child protective service or social services district, where said child is reported to the register when the records, reports or other information are necessary to enable the provider or coordinator to establish and implement a plan of service for the child or the child's family, or to monitor the provision and coordination of services and the circumstances of the child and the child's family, or to directly provide services; provided, however, that a pro-

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

vider of services may include appropriate health care or school district personnel, as such terms shall be defined by the department; provided however, a provider or coordinator of services given access to information concerning a child pursuant to this subparagraph (o) shall, notwithstanding any inconsistent provision of law, be authorized to redisclose such information to other persons or agencies which also provide services to the child or the child's family only if the consolidated services plan prepared and approved pursuant to section thirty-four-a of this chapter describes the agreement that has been or will be reached between the provider or coordinator of service and the local district. An agreement entered into pursuant to this subparagraph shall include the specific agencies and categories of individuals to whom redisclosure by the provider or coordinator of services is authorized. Persons or agencies given access to information pursuant to this subparagraph may exchange such information in order to facilitate the provision or coordination of services to the child or the child's family;

(p) a disinterested person making an investigation pursuant to section one hundred sixteen of the domestic relations law, provided that such disinterested person shall only make this information available to the judge before whom the adoption proceeding is pending;

(q) a criminal justice agency conducting an investigation of a missing child where there is reason to suspect such child or such child's sibling, parent, guardian or other person legally responsible for such child is a person named in an indicated report of child abuse or maltreatment and that such information is needed to further such investigation;

(r) in relation to a report involving a child in residential care, the director or operator of the residential facility or program and, as appropriate, the local social services commissioner or school district placing the child, the division for youth, the department of education, the commission on quality of care for the mentally disabled, the office of mental health, the office of mental retardation and developmental disabilities, and any law guardian appointed to represent the child whose appointment has been continued by a family court judge during the term of the placement, subject to the limitations contained in subdivisions nine and ten of this section and subdivision five of section four hundred twenty-four-c of this title;

(s) a child protective service of another state when such service certifies that the records and reports are necessary in order to conduct a child abuse or maltreatment investigation within its jurisdiction of the subject of the report and shall be used only for purposes of conducting such investigation and will not be redisclosed to any other person or agency;

(t) a law guardian, appointed pursuant to the provisions of section ten hundred sixteen of the family court act, at any time such appointment is in effect, in relation to any report in which the respondent in the proceeding in which the law guardian has been appointed is the subject or another person named in the report, pursuant to sections ten hundred thirty-nine-a and ten hundred fifty-two-a of the family court act;

(u) a child care resource and referral program subject to the provisions of subdivision six of sec-

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

tion four hundred twenty-four-a of this title;

(v)(i) officers and employees of the state comptroller or of the city comptroller of the city of New York, or of the county officer designated by law or charter to perform the auditing function in any county not wholly contained within a city, for purposes of a duly authorized performance audit, provided that such comptroller shall have certified to the keeper of such records that he or she has instituted procedures developed in consultation with the department to limit access to client-identifiable information to persons requiring such information for purposes of the audit and that appropriate controls and prohibitions are imposed on the dissemination of client-identifiable information contained in the conduct of the audit. Information pertaining to the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to such child or the child's family shall not be made available to such officers and employees unless disclosure of such information is absolutely essential to the specific audit activity and the department gives prior written approval.

(ii) any failure to maintain the confidentiality of client-identifiable information shall subject such comptroller or officer to denial of any further access to records until such time as the audit agency has reviewed its procedures concerning controls and prohibitions imposed on the dissemination of such information and has taken all reasonable and appropriate steps to eliminate such lapses in maintaining confidentiality to the satisfaction of the office of children and family services. The office of children and family services shall establish the grounds for denial of access to records contained under this section and shall recommend as necessary a plan of remediation to the audit agency. Except as provided in this section, nothing in this subparagraph shall be construed as limiting the powers of such comptroller or officer to access records which he or she is otherwise authorized to audit or obtain under any other applicable provision of law. Any person given access to information pursuant to this subparagraph who releases data or information to persons or agencies not authorized to receive such information shall be guilty of a class A misdemeanor;

(w) members of a local or regional fatality review team approved by the office of children and family services in accordance with section four hundred twenty-two-b of this title;

(x) members of a local or regional multidisciplinary investigative team as established pursuant to subdivision six of section four hundred twenty-three of this title;

(y) members of a citizen review panel as established pursuant to section three hundred seventy-one-b of this article; provided, however, members of a citizen review panel shall not disclose to any person or government official any identifying information which the panel has been provided and shall not make public other information unless otherwise authorized by statute; and

(z) an entity with appropriate legal authority in another state to license, certify or otherwise approve prospective foster and adoptive parents where disclosure of information regarding the prospective foster or adoptive parents and other persons over the age of eighteen residing in the

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

home of such prospective parents is required by paragraph twenty of subdivision (a) of section six hundred seventy-one of title forty-two of the United States code.

After a child, other than a child in residential care, who is reported to the central register of abuse or maltreatment reaches the age of eighteen years, access to a child's record under subparagraphs (a) and (b) of this paragraph shall be permitted only if a sibling or off-spring of such child is before such person and is a suspected victim of child abuse or maltreatment. In addition, a person or official required to make a report of suspected child abuse or maltreatment pursuant to section four hundred thirteen of this chapter shall receive, upon request, the findings of an investigation made pursuant to this title or section 45.07 of the mental hygiene law. However, no information may be released unless the person or official's identity is confirmed by the department. If the request for such information is made prior to the completion of an investigation of a report, the released information shall be limited to whether the report is "indicated", "unfounded" or "under investigation", whichever the case may be. If the request for such information is made after the completion of an investigation of a report, the released information shall be limited to whether the report is "indicated" or "unfounded", whichever the case may be. A person given access to the names or other information identifying the subjects of the report, or other persons named in the report, except the subject of the report or other persons named in the report, shall not divulge or make public such identifying information unless he or she is a district attorney or other law enforcement official and the purpose is to initiate court action or the disclosure is necessary in connection with the investigation or prosecution of the subject of the report for a crime alleged to have been committed by the subject against another person named in the report. Nothing in this section shall be construed to permit any release, disclosure or identification of the names or identifying descriptions of persons who have reported suspected child abuse or maltreatment to the statewide central register or the agency, institution, organization, program or other entity where such persons are employed or the agency, institution, organization or program with which they are associated without such persons' written permission except to persons, officials, and agencies enumerated in subparagraphs (e), (f), (h), (j), (l), (m) and (v) of this paragraph.

To the extent that persons or agencies are given access to information pursuant to subparagraphs (a), (b), (c), (j), (k), (l), (m), (o) and (q) of this paragraph, such persons or agencies may give and receive such information to each other in order to facilitate an investigation conducted by such persons or agencies.

(B) Notwithstanding any inconsistent provision of law to the contrary, a city or cou ty social services commissioner may withhold, in whole or in part, the release of any information which he or she is authorized to make available to persons or agencies identified in subparagraphs (a), (k), (*l*), (m), (n), (*o*), (p) and (q) of paragraph (A) of this subdivision if such commissioner determines that such information is not related to the purposes for which such informat on is requested or when such disclosure will be detrimental to the child named in the report.

(C) A city or county social services commissioner who denies access by persons or agencies identified in subparagraphs (a), (k), (*l*), (m), (n), (*o*), (p) and (q) of paragraph (A) of this subdivi-

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

sion to records, reports or other information or parts thereof maintained by such commissioner in accordance with this title shall, within ten days from the date of receipt of the request fully explain in writing to the person requesting the records, reports or other information the reasons for the denial.

(D) A person or agency identified in subparagraphs (a), (k), (*l*), (m), (n), (*o*), (p) and (q) of paragraph (A) of this subdivision who is denied access to records, reports or other information or parts thereof maintained by a local department pursuant to this title may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules.

5. (a) Unless an investigation of a report conducted pursuant to this title or subdivision (c) of section 45.07 of the mental hygiene law determines that there is some credible evidence of the alleged abuse or maltreatment, all information identifying the subjects of the report and other persons named in the report shall be legally sealed forthwith by the central register and any local child protective services or the state agency which investigated the report. Such unfounded reports may only be unsealed and made available:

(i) to the office of children and family services for the purpose of supervising a social services district;

(ii) to the office of children and family services and local or regional fatality review team members for the purpose of preparing a fatality report pursuant to section twenty or four hundred twenty-two-b of this chapter;

(iii) to a local child protective service, the office of children and family services, all members of a local or regional multidisciplinary investigative team, the commission on quality of care for the mentally disabled, or the department of mental hygiene, when investigating a subsequent report of suspected abuse or maltreatment involving a subject of the unfounded report, a child named in the unfounded report, or a child's sibling named in the unfounded report;

(iv) to the subject of the report; and

(v) to a district attorney, an assistant district attorney, an investigator employed in the office of a district attorney, or to a sworn officer of the division of state police, of a city, county, town or village police department or of a county sheriff's office when such official verifies that the report is necessary to conduct an active investigation or prosecution of a violation of subdivision three of section 240.55 of the penal law.

(b) Persons given access to unfounded reports pursuant to subparagraph (v) of paragraph (a) of this subdivision shall not redisclose such reports except as necessary to conduct such appropriate investigation or prosecution and shall request of the court that any copies of such reports produced in any court proceeding be redacted to remove the names of the subjects and other persons named in the reports or that the court issue an order protecting the names of the subjects and oth-

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

er persons named in the reports from public disclosure. The local child protective service or state agency shall not indicate the subsequent report solely based upon the existence of the prior unfounded report or reports. Notwithstanding section four hundred fifteen of this title, section one thousand forty-six of the family court act, or, except as set forth herein, any other provision of law to the contrary, an unfounded report shall not be admissible in any judicial or administrative proceeding or action; provided, however, an unfounded report may be introduced into evidence: (i) by the subject of the report where such subject is a respondent in a proceeding under article ten of the family court act or is a plaintiff or petitioner in a civil action or proceeding alleging the false reporting of child abuse or maltreatment; or (ii) in a criminal court for the purpose of prosecuting a violation of subdivision three of section 240.55 of the penal law. Legally sealed unfounded reports shall be expunged ten years after the receipt of the report. Whenever the office of children and family services determines that there is some credible evidence of abuse or maltreatment as a result of an investigation of a report conducted pursuant to subdivision (c) of section 45.07 of the mental hygiene law, the office of children and family services shall notify the commission on quality of care for the mentally disabled.

(c) Notwithstanding any other provision of law, the office of children and family services may, in its discretion, grant a request to expunge an unfounded report where: (i) the source of the report was convicted of a violation of subdivision three of section 240.55 of the penal law in regard to such report; or (ii) the subject of the report presents clear and convincing evidence that affirmatively refutes the allegation of abuse or maltreatment; provided however, that the absence of credible evidence supporting the allegation of abuse or maltreatment shall not be the sole basis to expunge the report. Nothing in this paragraph shall require the office of children and family services to hold an administrative hearing in deciding whether to expunge a report. Such office shall make its determination upon reviewing the written evidence submitted by the subject of the report and any records or information obtained from the state or local agency which investigated the allegations of abuse or maltreatment.

5-a. [Expires and deemed repealed June 1, 2011, pursuant to L.2007, c. 452, § 3.] Upon notification from a local social services district, that a report is part of the family assessment and services track pursuant to subparagraph (i) of paragraph (c) of subdivision four of section four hundred twenty-seven-a of this title, the central register shall forthwith identify the report as an assessment track case and legally seal such report.

6. [Eff. until Jan. 17, 2009. See, also, subd. 6 below.] In all other cases, the record of the report to the central register shall be expunged ten years after the eighteenth birthday of the youngest child named in the report. In the case of a child in residential care as defined in subdivision seven of section four hundred twelve of this chapter, the record of the report to the central register shall be expunged ten years after the reported child's eighteenth birthday. In any case and at any time, the commissioner may amend any record upon good cause shown and notice to the subjects of the report and other persons named in the report.

6. [Eff. Jan. 17, 2009. See, also, subd. 6 above.] In all other cases, the record of the report to the

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

statewide central register shall be expunged ten years after the eighteenth birth-day of the youngest child named in the report. In the case of a child in residential care as defined in subdivision four of section four hundred twelve-a of this title, the record of the report to the statewide central register shall be expunged ten years after the reported child's eighteenth birthday. In any case and at any time, the commissioner of the office of children and family services may amend any record upon good cause shown and notice to the subjects of the report and other persons named in the report.

7. At any time, a subject of a report and other persons named in the report may receive, upon request, a copy of all information contained in the central register; provided, however, that the commissioner is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation or the agency, institution, organization, program or other entity where such person is employed or with which he is associated, which he reasonably finds will be detrimental to the safety or interests of such person.

8. (a)(i) At any time subsequent to the completion of the investigation but in no event later than ninety days after the subject of the report is notified that the report is indicated the subject may request the commissioner to amend the record of the report. If the commissioner does not amend the report in accordance with such request within ninety days of receiving the request, the subject shall have the right to a fair hearing, held in accordance with paragraph (b) of this subdivision, to determine whether the record of the report in the central register should be amended on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this title.

(ii) [Eff. until Jan. 17, 2009. See, also, subpar. (ii) below.] Upon receipt of a request to amend the record of a child abuse and maltreatment report the department shall immediately send a written request to the child protective service or the state agency which was responsible for investigating the allegations of abuse or maltreatment for all records, reports and other information maintained by the service or state agency pertaining to such indicated report. The service or state agency shall as expeditiously as possible but within no more than twenty working days of receiving such request, forward all records, reports and other information it maintains on such indicated report to the department. The department shall as expeditiously as possible but within no more than fifteen working days of receiving such materials from the child protective service or state agency, review all such materials in its possession concerning the indicated report and determine, after affording such service or state agency a reasonable opportunity to present its views, whether there is some credible evidence to find that the subject committed the act or acts of child abuse or maltreatment giving rise to the indicated report and whether, based on guidelines developed by the department pursuant to subdivision five of section four hundred twenty-four-a of this title, such act or acts could be relevant and reasonably related to employment of the subject of the report by a provider agency, as defined by subdivision three of section four hundred twenty-four-a of this title, or relevant and reasonably related to the subject of the report being allowed to have regular and substantial contact with children who are cared for by a provider agency, or relevant and reasonably related to the approval or disapproval of an application submitted by the subject of the report to a licensing agency, as defined by subdivision four of section four hundred twen-

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

ty-four-a of this title.

(ii) [Eff. Jan. 17, 2009. See, also, subpar. (ii) above.] Upon receipt of a request to amend the record of a child abuse and maltreatment report the office of children and family services shall immediately send a written request to the child protective service or the state agency which was responsible for investigating the allegations of abuse or maltreatment for all records, reports and other information maintained by the service or state agency pertaining to such indicated report. The service or state agency shall as expeditiously as possible but within no more than twenty working days of receiving such request, forward all records, reports and other information it maintains on such indicated report to the office of children and family services. The office of children and family services shall as expeditiously as possible but within no more than fifteen working days of receiving such materials from the child protective service or state agency, review all such materials in its possession concerning the indicated report and determine, after affording such service or state agency a reasonable opportunity to present its views, whether there is a fair preponderance of the evidence to find that the subject committed the act or acts of child abuse or maltreatment giving rise to the indicated report and whether, based on guidelines developed by the office of children and family services pursuant to subdivision five of section four hundred twenty-four-a of this title, such act or acts could be relevant and reasonably related to employment of the subject of the report by a provider agency, as defined by subdivision three of section four hundred twenty-four-a of this title, or relevant and reasonably related to the subject of the report being allowed to have regular and substantial contact with children who are cared for by a provider agency, or relevant and reasonably related to the approval or disapproval of an application submitted by the subject of the report to a licensing agency, as defined by subdivision four of section four hundred twenty-four-a of this title.

(iii) If it is determined at the review held pursuant to this paragraph (a) that there is no credible evidence in the record to find that the subject committed an act or acts of child abuse or maltreatment, the department shall amend the record to indicate that the report is "unfounded" and notify the subject forthwith.

(iv) If it is determined at the review held pursuant to this paragraph (a) that there is some credible evidence in the record to find that the subject committed such act or acts but that such act or acts could not be relevant and reasonably related to the employment of the subject by a provider agency or to the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or the approval or disapproval of an application which could be submitted by the subject to a licensing agency, the department shall be precluded from informing a provider or licensing agency which makes an inquiry to the department pursuant to the provisions of section four hundred twenty-four-a of this title concerning the subject that the person about whom the inquiry is made is the subject of an indicated report of child abuse or maltreatment. The department shall notify forthwith the subject of the report of such determinations and that a fair hearing has been scheduled pursuant to paragraph (b) of this subdivision. The sole issue at such hearing shall be whether the subject has been shown by some credible evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

(v) If it is determined at the review held pursuant to this paragraph (a) that there is some credible evidence in the record to prove that the subject committed an act or acts of child abuse or maltreatment and that such act or acts could be relevant and reasonably related to the employment of the subject by a provider agency or to the subject being allowed to have regular and substantial contact with children cared for by a provider agency or the approval or disapproval of an application which could be submitted by the subject to a licensing agency, the department shall notify forthwith the subject of the report of such determinations and that a fair hearing has been scheduled pursuant to paragraph (b) of this subdivision.

(b)(i) If the department, within ninety days of receiving a request from the subject that the record of a report be amended, does not amend the record in accordance with such request, the department shall schedule a fair hearing and shall provide notice of the scheduled hearing date to the subject, the statewide central register and, as appropriate, to the child protective service or the state agency which investigated the report.

(ii) The burden of proof in such a hearing shall be on the child protective service or the state agency which investigated the report, as the case may be. In such a hearing, the fact that there is a family court finding of abuse or neglect against the subject in regard to an allegation contained in the report shall create an irrebuttable presumption that said allegation is substantiated by some credible evidence.

(c)(i) If it is determined at the fair hearing that there is no credible evidence in the record to find that the subject committed an act or acts of child abuse or maltreatment, the department shall amend the record to reflect that such a finding was made at the administrative hearing, order any child protective service or state agency which investigated the report to similarly amend its records of the report, and shall notify the subject forthwith of the determination.

(ii) [Eff. until Jan. 17, 2009. See, also, first undesig. par. below.] Upon a determination made at a fair hearing held on or after January first, nineteen hundred eighty-six scheduled pursuant to the provisions of subparagraph (v) of paragraph (a) of this subdivision that the subject has been shown by some credible evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report, the hearing officer shall determine, based on guidelines developed by the department pursuant to subdivision five of section four hundred twenty-four-a of this chapter, whether such act or acts are relevant and reasonably related to employment of the subject by a provider agency, as defined by subdivision three of section four hundred twenty-four-a of this title, or relevant and reasonably related to the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or relevant and reasonably related to the approval or disapproval of an application submitted by the subject to a licensing agency, as defined by subdivision four of section four hundred twenty-four-a of this title.

ii) [Eff. Jan. 17, 2009. See, also, first undesig. par. above.] Upon a determination made at a fair hearing held on or after January first, nineteen hundred eighty-six scheduled pursuant to the pro-

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

visions of subparagraph (v) of paragraph (a) of this subdivision that the subject has been shown by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report, the hearing officer shall determine, based on guidelines developed by the office of children and family services pursuant to subdivision five of section four hundred twenty-four-a of this title, whether such act or acts are relevant and reasonably related to employment of the subject by a provider agency, as defined by subdivision three of section four hundred twenty-four-a of this title, or relevant and reasonably related to the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or relevant and reasonably related to the approval or disapproval of an application submitted by the subject to a licensing agency, as defined by subdivision four of section four hundred twenty-four-a of this title.

Upon a determination made at a fair hearing that the act or acts of abuse or maltreatment are relevant and reasonably related to employment of the subject by a provider agency or the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or the approval or denial of an application submitted by the subject to a licensing agency, the department shall notify the subject forthwith. The department shall inform a provider or licensing agency which makes an inquiry to the department pursuant to the provisions of section four hundred twenty-four-a of this title concerning the subject that the person about whom the inquiry is made is the subject of an indicated child abuse or maltreatment report.

The failure to determine at the fair hearing that the act or acts of abuse and maltreatment are relevant and reasonably related to the employment of the subject by a provider agency or to the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or the approval or denial of an application submitted by the subject to a licensing agency shall preclude the department from informing a provider or licensing agency which makes an inquiry to the department pursuant to the provisions of section four hundred twenty-four-a of this title concerning the subject that the person about whom the inquiry is made is the subject of an indicated child abuse or maltreatment report.

(d) The commissioner or his or her designated agent is hereby authorized and empowered to make any appropriate order respecting the amendment of a record to make it accurate or consistent with the requirements of this title.

(e) Should the department grant the request of the subject of the report pursuant to this subdivision either through an administrative review or fair hearing to amend an indicated report to an unfounded report. Such report shall be legally sealed and shall be released and expunged in accordance with the standards set forth in subdivision five of this section.

9. Written notice of any expungement or amendment of any record, made pursuant to the provisions of this title, shall be served forthwith upon each subject of such record, other persons named in the report, the commissioner, and, as appropriate, the applicable local child protective service, the commission on quality of care for the mentally disabled, the division for youth, de-

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

partment of education, office of mental health, office of mental retardation and developmental disabilities, the local social services commissioner or school district placing the child, any law guardian appointed to represent the child whose appointment has been continued by a family court judge during the term of a child's placement, and the director or operator of a residential care facility or program. The local child protective service or the state agency which investigated the report, upon receipt of such notice, shall take the appropriate similar action in regard to its child abuse and maltreatment register and records and inform, for the same purpose, any other agency which received such record.

10. Whenever the department determines that there is some credible evidence of abuse or maltreatment as a result of an investigation of a report conducted pursuant to this title or section 45.07 of the mental hygiene law concerning a child in residential care, the department shall notify the child's parent or guardian and transmit copies of reports made pursuant to this title to the director or operator of the residential facility or program and, as applicable, the local social services commissioner or school district placing the child, division for youth, department of education, commission on quality of care for the mentally disabled, office of mental health, office of mental retardation and developmental disabilities, and any law guardian appointed to represent the child whose appointment has been continued by a family court judge during the term of a child's placement.

11. (a) [Eff. until Jan. 17, 2009. See, also, par. (a) below.] Reports and records made pursuant to this title, including any previous report concerning a subject of the report, other persons named in the report or other pertinent information, involving children who reside in residential facilities or programs enumerated in paragraphs (a), (b), (c), (d), (e), (f) and (h) of subdivision seven of section four hundred twelve of this chapter, shall be transmitted immediately by the central register to the commissioner who shall commence an appropriate investigation consistent with the terms and conditions set forth in section four hundred twenty-four-c of this title. If an investigation determines that some credible evidence of alleged abuse or maltreatment exists, the commissioner shall recommend to the local social services department, the state education department or the division for youth, as the case may be, that appropriate preventive and remedial action including legal action, consistent with applicable collective bargaining agreements and applicable provisions of the civil service law, pursuant to standards and regulations of the department promulgated pursuant to section four hundred sixty-two of this chapter and standards and regulations of the division for youth and the department of education promulgated pursuant to section five hundred one of the executive law, sections forty-four hundred three, forty-three hundred fourteen, forty-three hundred fifty-eight and forty-two hundred twelve of the education law and other applicable provisions of law, be taken with respect to the residential facility or program and/or the subject of the report. However, nothing in this paragraph shall prevent the commissioner from making recommendations, as provided for by this paragraph, even though the investigation may fail to result in a determination that there is some credible evidence of the alleged abuse or maltreatment.

11. (a) [Eff. Jan. 17, 2009. See, also, par. (a) above.] Reports and records made pursuant to this

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

title, including any previous report concerning a subject of the report, other persons named in the report or other pertinent information, involving children who reside in residential facilities or programs enumerated in paragraphs (a), (b), (c), (d), (e), (f) and (j) of subdivision four of section four hundred twelve-a of this title, shall be transmitted immediately by the statewide central register to the commissioner of the office of children and family services who shall commence an appropriate investigation consistent with the terms and conditions set forth in section four hundred twenty-four-c of this title.

(b) The department shall establish standards for the provision of training to its employees charged with the investigation of reports of child abuse and maltreatment in residential care in at least the following: (a) basic training in the principles and techniques of investigation, including relationships with other investigative bodies, (b) legal issues in child protection including the legal rights of children, employees and volunteers, (c) methods of identification, remediation, treatment and prevention, (d) safety and security procedures, and (e) the principles of child development, the characteristics of children in care, and techniques of group and child management including crisis intervention. The department shall take all reasonable and necessary actions to assure that its employees are kept apprised on a current basis of all department policies and procedures relating to the protection of children from abuse and maltreatment.

(c) [Eff. until Jan. 17, 2009. See, also, par. (c) below.] Reports and records made pursuant to this title, including any previous report concerning a subject of the report, other persons named in the report or other pertinent information, involving children who reside in a residential facility licensed or operated by the offices of mental health or mental retardation and developmental disabilities except those facilities or programs enumerated in paragraph (h) of subdivision seven of section four hundred twelve of this chapter, shall be transmitted immediately by the central register to the commission on quality of care for the mentally disabled, which shall commence an appropriate investigation in accordance with the terms and conditions set forth in section 45.07 of the mental hygiene law.

(c) [Eff. Jan. 17, 2009. See, also, par. (c) above.] Reports and records made pursuant to this title, including any previous report concerning a subject of the report, other persons named in the report or other pertinent information, involving children who reside in a residential facility licensed or operated by the offices of mental health, mental retardation and developmental disabilities or alcoholism and substance abuse services except those facilities or programs enumerated in paragraph (j) of subdivision four of section four hundred twelve-a of this title, shall be transmitted immediately by the statewide central register to the commission on quality of care and advocacy for persons with disabilities, which shall commence an appropriate investigation in accordance with the terms and conditions set forth in section 45.07 of the mental hygiene law.

12. Any person who willfully permits and any person who encourages the release of any data and information contained in the central register to persons or agencies not permitted by this title shall be guilty of a class A misdemeanor.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

13. There shall be a single statewide telephone number for use by all persons seeking general information about child abuse, maltreatment or welfare other than for the purpose of making a report of child abuse or maltreatment.

14. The department shall refer suspected cases of falsely reporting child abuse and maltreatment in violation of subdivision three of section 240.55 of the penal law to the appropriate law enforcement agency or district attorney.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER C. SOCIAL SERVICES
ARTICLE 2. FAMILY AND CHILDREN'S SERVICES
PART 423. PREVENTIVE SERVICES REGULATIONS

Current through Current with amendments included in the New York State Register, Volume XXXI, Issue 9, dated March 4, 2009.

Section 423.7. Confidentiality

(a) At the time of application for mandated or nonmandated preventive services, before individual identifiable information is collected and recorded, the local social services district or other authorized agency providing services shall notify the applicant for preventive services in writing of:

(1) the funding of preventive services through public revenues;

(2) the applicable statutes and regulations regarding the collection and disclosure of individual identifiable preventive services records; and

(3) the service provider's procedures and practices in regard to record maintenance and access to client specific records.

(b) All records established and maintained pursuant to titles 4 and 4-a of article 6 of the Social Services Law of applicants for and recipients of preventive services shall be confidential and shall be open to the inspection of only:

(1) the New York State Department of Social Services;

(2) the social services district;

(3) a preventive service agency, as defined in section 423.2(a) of this Part, or an authorized agency, as defined in subdivision (a) of section 371.10 of the Social Services Law, providing services to the child or other family members;

(4) any person or entity upon an order of a court of competent jurisdiction; or

(5) any other person or entity providing or agreeing to provide services to the child or the child's family upon the execution of a written consent by the child or the child's parent in accordance with subdivision (e) of this section.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

(c) In addition to those granted access pursuant to subdivision (b) of this section, records relating to the provision of preventive services pursuant to title 4 of article 6 of the Social Services Law, other than those established and maintained pursuant to section 409-f of the Social Services Law, shall be available at any reasonable time to an employee or official of a Federal, State or local agency for the purpose of conducting a fiscal audit where said records are necessary for the conducting of the fiscal audit.

(d) An agency or person given access pursuant to subdivisions (b) and (c) of this section to the names or other information identifying the applicants for and recipients of preventive services shall not divulge or make public such information except where authorized by a court of competent jurisdiction or upon the execution of a written consent by a parent or a child in accordance with the provisions of subdivision (e) of this section.

(e)

(1) A child with the capacity to consent or such child's parent may authorize the disclosure of client identifiable preventive services information to a person or entity providing or agreeing to provide services to the child or such child's family by executing a written consent.

(2) A parent may consent to the release of client identifiable preventive services information concerning the parent and the parent's family, including any children in the family. A child may consent to the release of client identifiable preventive services information about himself or herself where the child's parent is unavailable or lacks the capacity to consent and the child is determined to have the capacity to consent.

(3) A consent authorizing disclosure of client identifiable preventive services information in accordance with this subdivision must satisfy the following procedural requirements:

(i) The consent must be in writing and voluntarily executed.

(ii) The consent must be dated any specify the person or entity to which disclosure is authorized, and whether or not redisclosure of the information by such person or entity is permitted. If redisclosure is permitted, any limitations on redisclosure must be specified.

(iii) The consent must specify what information may be disclosed.

(iv) The consent must identify the purpose of the disclosure and any limitations on the use of the information by the person or entity.

(v) The consent must specify a time period during which the consent is to be effective or a date or event certain upon which the consent will expire.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

(vi) The consent must state that the person executing the consent may terminate his or her authorization at any time.

(vii) A copy of the consent must be given to the person who executed it.

(4) For the purpose of this subdivision, *the capacity to consent* means an individual's ability, determined without regard to such individual's age, to understand and appreciate the nature and consequence of a proposed action, treatment or procedure and to make an informed decision concerning such action, treatment or procedure.

(5) For the purpose of this subdivision, a *parent* includes a natural parent, adoptive parent, stepparent, guardian, or caretaker with whom a child resides.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER C. SOCIAL SERVICES
ARTICLE 2. FAMILY AND CHILDREN'S SERVICES
PART 431. CARE AND PROTECTION OF CHILDREN

Current through Current with amendments included in the New York State Register, Volume XXXI, Issue 9, dated March 4, 2009.

Section 431.7. Standards for access to and disclosure of confidential HIV-related information

(a) Staff of an authorized agency as defined by paragraphs (a) and (b) of section 371(10) of the Social Services Law must comply with the following standards relating to access to and disclosure of confidential HIV related information.

(1) Each authorized agency is responsible for formulating a written management plan to ensure that required safeguards are implemented and enforced to restrict the disclosure of confidential HIV related information concerning children in its care. This management plan must be available for review by the department and must include:

(i) procedures consistent with section 2782.6 of the Public Health Law to ensure that documents containing confidential HIV related information are accessible only to an authorized employee or agent of the authorized agency when disclosure is reasonably necessary for the supervision, monitoring, administration or provision of services provided by such agencies. For the purpose of this section, an authorized employee or agent means an employee or agent who, in the ordinary course of business of the authorized agency, has access to records relating to the care of, treatment of, or provision of services to the person; and

(ii) measures to ensure that confidential HIV related information stored electronically is protected from access by unauthorized persons; and

(iii) a plan for training agency staff regarding HIV infection, confidentiality of HIV related information, and protection of persons at significant risk in accordance with subdivision (c) of this section.

(2) Such authorized employees or agents must be provided with a written statement warning of penalties for unauthorized disclosure as follows: "This information has been disclosed to you from confidential records which are protected by State law. State law prohibits you from making any further disclosure of this information without the specific written consent of the

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

person to whom it pertains or as otherwise permitted by law. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure."

(3) Redisclosure of confidential HIV related information by an authorized agency is not permitted except in a manner consistent with article 27-F of the Public Health Law, section 373-a of the Social Services Law and section 357.3(b) of this Title.

(4) Confidential HIV related information included in the child's health history must be provided to:

(i) another authorized agency to whom the care of the child is transferred;

(ii) the foster parents who have responsibility for the child's care;

(iii) the prospective adoptive parents as defined in section 421.1 of this Title or adoptive parents of the child;

(iv) the biological parents when the child is discharged to such parents and such disclosure is authorized by section 2782 of the Public Health Law;

(v) a child discharged to his or her own care.

(5) Confidential HIV related information is defined in section 360-8.1 of this Title.

(b)

(1) Foster parents may redisclose confidential HIV-related information concerning a foster child boarded out or placed with such parents to persons or entities other than those set forth in article 27-F of the Public Health Law only:

(i) when redisclosure is for the purpose of providing care, treatment or supervision of the foster child; or

(ii) upon specific written authorization signed by the commissioner of the social services district or such commissioner's designated representative in accordance with article 27-F of the Public Health Law. Such authorization must be maintained in the child's uniform case record.

(2) Any disclosure of confidential HIV-related information by a foster parent, except as authorized by article 27-F of the Public Health Law, must be accompanied by a statement in writing which includes the following or substantially similar language:

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

"This information has been disclosed to you from confidential records which are protected by State law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure."

(c) *Training of Staff.* Each authorized responsible for the care of HIV infected children, and for maintaining the confidentiality of records for such children, must provide initial training within 90 days of promulgation of these regulations, and thereafter at least annually, to all staff persons authorized to have access to any files and records, written or electronic, containing information on HIV infected children. As new staff with such access are added to agency personnel, initial training must be provided within 45 days of employment. Such training must include, but is not limited to:

(1) a review of State law and department regulations related to confidentiality of HIV information, including, but not limited to:

(i) the necessity for written authorization for redisclosure on a case by case assessment;

(ii) the list of specific persons to whom HIV related information in the child's health history must be provided in accordance with Social Services Law 373-a and Section 357.3(b) of this Title; and

(iii) the provision of the required warning statement of penalties for redisclosure in accordance with section 405.3(g)(16) of this Title.

(2) a review of the agency's written management plan for maintaining security of records;

(3) information on factors which constitute significant risk of contracting or transmitting HIV infection as defined by the State Department of Health regulations 10 NYCRR Part 63.9. Such factors include the presence of significant risk body substances, principally blood and semen, and the circumstances which result in transmission of such substances;

(4) hygienic measure recommended for the protection of persons caring for an HIV infected child and for protection of HIV infected children from unnecessary exposure to additional infections. Such measures include:

(i) standard accepted practices for cleanliness and infection control;

(ii) the use of preventive barriers where indicated, specifically if the caretaker's skin has open wounds or abrasions, or if there is presence of blood; and

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

(5) current research information concerning HIV infection which includes, but is not limited to, the evidence that HIV disease is not transmitted by casual or in ordinary home and family care of children.

(d) *Law guardian.* When requested by a law guardian, an authorized agency must disclose confidential HIV-related information concerning a foster child to the law guardian if the law guardian is appointed to represent the foster child pursuant to the Social Services Law or the Family Court Act and the information is for the purpose of representing the foster child. A law guardian appointed to represent a child may redisclose confidential HIV-related information only with the consent of the child if the child has capacity to consent. If the child lacks capacity to consent, the law guardian may redisclose confidential HIV-related information for the sole purpose of representing the child.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER C. SOCIAL SERVICES
ARTICLE 2. FAMILY AND CHILDREN'S SERVICES
PART 432. CHILD ABUSE AND MALTREATMENT

Current through Current with amendments included in the New York State Register, Volume XXXI, Issue 9, dated March 4, 2009.

Section 432.7. Access to reports

The commissioner of social services in each social services district shall insure that any reports made, as well as any other information obtained, reports written or photographs taken concerning such reports, be confidential and shall only be made available to those persons defined under title 6 of article 6 of the Social Services Law, because any person who willfully permits and any person who encourages the release of any data and information contained in the local or statewide register to persons or agencies not permitted by title 6 of article 6 of the Social Services Law shall be guilty of a class A misdemeanor.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

Social Services Law
444. Confidentiality of records; related matters

1. The department in consultation with the advisory committee shall make regulations;

(a) protecting the confidentiality of individual identifying information submitted to or provided by the service, and preventing access thereto, by, or the distribution thereof to, persons not authorized by law;

(b) setting forth procedures for informing any child or his representative of the nature of the system and its uses;

(c) allowing any child or his representative or any member of his family, an opportunity to review any information pertaining to such child or family and to request that any part of such information be amended or expunged; and

(d) providing that the service shall remove from its records and expunge the individual identifying information, excluding non-identifying child or family data to be used for historical purposes, concerning any child who has been discharged from care.

2. Prior to final promulgation of any regulations as described in subdivision one of this section, the department shall, in addition to complying with all other advance notice requirements make proposed regulations available to all state agencies charged with the administration or supervision of child care programs and to local government agencies and persons that have expressed an interest in safeguarding information maintained by the service, and shall provide such agencies with an opportunity to comment on the proposed regulations. In promulgating final regulations the department shall consider any comments received.

3. Any persons wilfully violating or failing to comply with the provisions of subdivision one of this section or wilfully violating or failing to comply with any regulation which the department is authorized under such subdivision to make, shall be guilty of a misdemeanor.

4. The regulations promulgated pursuant to subdivision one of this section, shall provide that the information compiled and maintained by the service pursuant to paragraph (d) of subdivision ten of section four hundred forty-two of this title shall be subject to the confidentiality provisions of title six of this article.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER C. SOCIAL SERVICES
ARTICLE 4. RESIDENTIAL PROGRAMS FOR VICTIMES OF DOMESTIC VIOLENCE
PART 452. GENERAL PROVISIONS

Current through Current with amendments included in the New York State Register, Volume XXXI, Issue 9, dated March 4, 2009.

Section 452.10. Confidentiality

(a) *Access to information.* All records, books, reports and papers established and maintained pursuant to this Part and Parts 453, 454 and 455 of this Title relating to the operation of residential programs for victims of domestic violence and to the residents of such programs are confidential. Access to such information will be permitted only as follows:

(1) the department will have full access to all books, records, reports and papers relating to the operation of residential programs for victims of domestic violence and to the residents of such programs including access to any client identifiable information for purposes of inspection and supervision as required by section 452.8 of this Part;

(2) any person or entity will have access to information as permitted by an order of a court of competent jurisdiction;

(3) a residential program for victims of domestic violence will have access to information maintained in a resident's case record by another residential program for victims of domestic violence, excluding any information identifying the actual street address where the resident is sheltered, in those situations where a resident continues to be in need of a residential program for victims of domestic violence beyond the current program's length of stay policy and a referral has been made to another available residential program for victims of domestic violence;

(4) a local social services district will have access:

(i) to fiscal records and nonidentifiable information which is deemed necessary by the department to establish an approved per diem rate pursuant to section 131-u(2) of the Social Services Law. This will not include access to information identifying the actual street address where residents are being sheltered or any identifying information on safe home providers;

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

(ii)

(*a*) to resident case records, including any resident identifiable information, for purposes of investigating a report of suspected child abuse and maltreatment pursuant to title 6 of article 6 of the Social Services Law;

(*b*) to resident case records, excluding information identifying the actual street address where residents are being sheltered, when a resident has voluntarily given written authorization for the release of such information. A local social services district cannot require that a resident sign such authorization as a condition for receiving public assistance or services; and

(*c*) to those elements of the resident case record as listed below for purposes of reimbursing a residential program for victims of domestic violence the approved per diem rate:

(*1*) the name of the resident for whom an approved per diem rate will be paid;

(*2*) the name of any minor children for whom an approved per diem rate will be paid;

(*3*) the business address of the residential program for victims of domestic violence;

(*4*) the date the resident entered the program;

(*5*) the date of the resident's departure from the program; and

(*6*) other relevant information which identifies a resident's service and safety needs and which is necessary to ensure the provision of appropriate services to the resident;

(5) a resident as defined in this Part and Parts 453, 454 and 455 of this Title will have access to all information maintained in his/her resident case record maintained in accordance with section 452.9(c)(1) of this Part;

(6) an employee or official of a Federal, State or local agency will have access to records relating to the financial operation of a residential program for victims of domestic violence other than to a resident's case record and to records identifying the actual shelter site for purposes of conducting a fiscal audit.

(b) *Disclosure.*

(1) An agency or person given access to any books, records, reports and papers relating to the operation of a residential program for victims of domestic violence pursuant to subdivision (a) of this section or to the residents of such program must not divulge or make public such information except:

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

(i) where authorized by a court of competent jurisdiction;

(ii) where expressly authorized by a resident of a residential program for victims of domestic violence;

(iii) to a person or entity otherwise authorized to have access pursuant to subdivision (a) of this section for purposes directly related to the administration of a residential program for victims of domestic violence; or

(iv) where otherwise authorized by statute.

(2) Employees of the New York State Department of Social Services and a local social services district given access to information pursuant to this section who redisclose information in a manner which is not consistent with the provision of this Part are subject to disciplinary action in accordance with appropriate collective bargaining agreements and applicable law and regulation.

(c) *Confidentiality of facility address.*

(1) Each program must maintain a business mailing address separate and distinct from the actual address where residents are sheltered. When releasing the address of any resident, programs must release only the business address of the program and not the actual address where the resident is being sheltered. For the purposes of applying for and receiving public assistance, medical assistance and/or community services, residents must use the business mailing address of the program and not the actual street address of the shelter.

(2) All information related to the general location or specific street address of a structure anticipated to house or housing a residential program for victims of domestic violence contained in any application or other document submitted to a state or local agency or any instrumentality thereof shall be kept confidential and not subject to release or disclosure in whole or in part. A state or local agency or any instrumentality thereof shall deny any request for such information made pursuant to Article 6 of the Public Officers Law in accordance with Section 87(2)(f) of such law.

(3) A state or local agency or any instrumentality thereof and its employees may disclose the general location or specific street address of a structure anticipated to house or housing a residential program for victims of domestic violence only where authorized by a Court of competent jurisdiction or otherwise expressly permitted by statute or regulation.

(d) *Local district access to residents.*

(1) A local social services district will have access to a resident of a residential program for victims of domestic violence at the facility or safe home only under the following cir-

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

cumstances:

(i) where authorized by an order of a court of competent jurisdiction;

(ii) notwithstanding the requirements of this Title, for purposes for investigating a report of suspected child abuse or maltreatment in which the subject of a report is a resident of a residential program for victims of domestic violence or a safe home provider. Nothing in this subparagraph prevents a local child protective service from interviewing residents of a residential program for victims of domestic violence at a location other than the facility or safe home; and

(iii) where authorized by the policies of a residential program for victims of domestic violence and with the concurrence of the resident.

(2) A local social services district will have access to the residents of a residential program for victims of domestic violence, where the program policies do not permit access on site, at a location other than the confidential location of the actual facility site or safe home when such access is necessary in order for the local social services district to determine a resident's length of stay at a residential program for victims of domestic violence, to assess the service and safety needs of the resident and/or to assist a resident in finding appropriate alternative housing. Notwithstanding the requirements of this section, nothing in this subdivision prevents a local social services district from having access to a facility site where such access is permitted by the policies of a residential program for victims of domestic violence.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER C. SOCIAL SERVICES
ARTICLE 5. ADULT AND FAMILY SERVICES
PART 457. PROTECTIVE SERVICES FOR ADULTS

Current through Current with amendments included in the New York State Register, Volume XXXI, Issue 9, dated March 4, 2009.

Section 457.16. Confidentiality

(a) *Definitions.* When used in this section, unless otherwise expressly stated or unless the context requires a different interpretation:

(1) *Subject of a report* means a person who is the subject of a referral or an application for PSA or who is receiving or has received PSA from a social services district.

(2) *Authorized representative of a subject of a report* means:

(i) a person named in writing by a subject to be a subject's representative for purposes of requesting and receiving records under this Part; provided, however, that the subject has contract capacity at the time of the writing or had executed a durable power of attorney at a time when the subject had such capacity, naming the authorized representative as attorney-in-fact, and such document has not been revoked in accordance with applicable law;

(ii) a person appointed by a court, or otherwise authorized in accordance with law to represent or act in the interests of the subject; or

(iii) legal counsel for the subject.

(b) Information in the possession of the department or a social services district including, but not limited to, reports made pursuant to this Part, the names of referral sources, written reports or photographs, required forms, progress notes and other information in the case record concerning the subject of a report, is confidential. Accordingly, the department or a social services district must not release reports or other information in their possession which pertain to a person who is the subject of a report without the approval of such subject or his or her authorized representative, except as provided for in subdivision (c) of this section.

(c) The following persons, officers and agencies may receive information from the department or a social services district concerning the subject of a report:

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

(1) any person who is the subject of a report or such person's authorized representative;

(2) a provider of services to a current or former PSA client where a social services official, or his/her designee, has determined that such information is necessary to determine the need for, or to provide or arrange for the delivery of PSA. For the purposes of this section a *PSA client* means the subject of a PSA report;

(3) a court, upon a finding that the information in the record is necessary for the use by a party in a criminal or civil action or in the determination of an issue before the court;

(4) a grand jury, upon a finding that the information in the record is necessary for the determination of charges before the grand jury;

(5) a district attorney, assistant district attorney or an investigator employed in the office of the district attorney, a member of the Division of the State Police, a police officer employed by a city, county, town or village police department or by a county sheriff when such official requests such information stating that:

(i) the information is necessary to conduct a criminal investigation or criminal prosecution of a person;

(ii) there is reasonable cause to believe that a criminal investigation or prosecution involves or otherwise affects a person who is the subject of a PSA referral or application or is receiving or has received PSA; and

(iii) it is reasonable to believe that due to the nature of the crime under investigation or prosecution, such records may be related to the criminal investigation or prosecution;

(6) a person named court appointed evaluator or guardian pursuant to article 81 of the Mental Hygiene Law, or a person named as a guardian for the mentally retarded pursuant to article 17-A of the Surrogate's Court Procedure Act; or

(7) any person entitled to such record in accordance with applicable law.

(d) Prior to the release of a record or other information maintained pursuant to this Part to persons, officers and agencies specified in subdivision (c) of this section, the department or a social services district must be satisfied that the confidential character of the information will be maintained in accordance with applicable law and that such information will be used solely for the purposes for which it was made available. Furthermore, any release of confidential HIV information, as defined in section 2780 of the Public Health Law, must comply with the requirements of article 27-f of such law and Parts 357 and 403 of this Title.

(e) The commissioner or a local social services official may withhold in whole, or in part, the

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

release of any information in their possession which they are otherwise authorized to release in accordance with subdivision (c) of this section, if such official determines that:

(1) the release of such information would identify a person who made a referral or submitted an application on behalf of a person for PSA, or who cooperated in a subsequent investigation and assessment conducted by a social services district to determine a person's need for PSA; and

(2) the official reasonably determines that the release of such information would be detrimental to the safety or interests of such individual.

(f) When a record made under this Part is subpoenaed or sought pursuant to notice to permit discovery, a social services official may move to withdraw, quash, fix conditions or modify the subpoena, or to move for a protective order, as may be appropriate, in accordance with the applicable provisions of the Criminal Procedure Law or the Civil Practice Law and Rules to:

(1) delete the identity of any persons who made a referral or submitted an application for PSA on behalf of an individual, or who cooperated in a subsequent investigation and assessment of the individual's need for such services, or the agency, institution, program or other entity when persons are employed, or with which such persons are associated;

(2) withhold records, the disclosure of which is likely to be detrimental to the safety or interests of such persons; or

(3) otherwise object to the release of all or a portion of the record on the basis that the requested release of records is for a purpose not authorized under the law.

(g) For the purpose of this section, a *record* means any information in the possession of the department or a social services district regarding the subject of a report as defined in subdivision (a) of this section.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

Social Services Law
§ 459-g. Confidentiality

1. The street address of any residential program for victims of domestic violence applying for funding pursuant to this article shall be confidential and may be disclosed only to persons designated by rules and regulations of the department.

2. All information related to the general location or specific street address of a structure anticipated to house a residential program for victims of domestic violence that is contained in any application submitted to a state or local agency or any instrumentality thereof prior to the filing of an application for funding pursuant to this article shall be kept confidential by those entities and their employees and may be disclosed only to persons designated by the rules and regulations of the department.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER C. SOCIAL SERVICES
ARTICLE 5. ADULT AND FAMILY SERVICES
PART 465. CONFIDENTIALITY OF INFORMATION COLLECTED BY THE CHILD CARE REVIEW SERVICE

Current through Current with amendments included in the New York State Register, Volume XXXI, Issue 9, dated March 4, 2009.

Section 465.1. Confidentiality and access of information

(a) The use and disclosure of all information received for applicants for and recipients of foster care, preventive services and child protective services as a result of an indicated report of child abuse and maltreatment through the child care review service shall be subject to Parts 357, 423 and 432 of this Title. Any person, firm, corporation or association contracted by the department for the child care review service shall safeguard the confidentiality of information received or maintained by the service in the same manner, and will remain subject to the same confidentiality requirements of Parts 357, 423 and 432 of this Title.

(1) Disclosure of information to authorized agencies and individuals.

(i) The child care review service will issue individual identifiable information only to representatives of the State Department of Social Services, the local social services district responsible for the child, and any authorized agency as defined in subdivision 10 of section 371 of the Social Services Law providing services and care to the child and, in accordance with provisions below, the child or his representative.

(ii) Information identifiable by caseload or by social worker will only be made available by the child care review service to the authorized agency employing the worker, the local social services district purchasing care and service, and the State Department of Social Services.

(iii) Information not identifying children, families or caseworkers including aggregate information which may identify local social services districts and voluntary agencies will be public information.

(iv) Except for recurring aggregate reports the child care review service will notify public and voluntary agencies of the public release of information specifically identifying their agency.

(2) Safeguards for the disclosure of information to authorized agencies and individuals.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

(i) Information shall be released to authorized agencies and individuals only when the public welfare official providing such data is assured that:

(*a*) the confidential character of the information will be maintained;

(*b*) the information will be used for the purposes for which it is made available, such purposes to be reasonably related to the purposes of the public welfare program and the functioning of the inquiring agency;

(*c*) the information will not be used for commercial or political purposes.

(ii) The child care review service shall be notified of any use made of child and/or family specific information generated by the child care review service.

(iii) Those agencies receiving individual identifying information from the child care review service shall designate a security officer responsible for assuring the maintenance of the confidentiality of said information.

(iv) Those individuals who fail to take reasonable security precautions resulting in the unlawful disclosure of confidential information shall be guilty of a misdemeanor.

(3) Disclosure of information to the child or representative.

(i) Subject to the provisions of Parts 357, 423 and 432 of this Title, any child, his guardian, attorney parent or next of kin shall be provided an opportunity to review information on file with the child care review service pertaining to such child or family.

(ii) Requests to review information on file with the child care review service shall be made to the State director of the child care review service. Denial of such request to review information shall be made in writing stating the reason or reasons therefor.

(4) Requests for amendment or expungement of information.

(i) Any child or his guardian, attorney, parent, or next of kin may request that any information on file with the child care review service be amended or expunged.

(ii) Requests for amendment or expungement of information shall be addressed to the director of the child care review service. Within 30 days of the request, the director of the child care review service or his representative shall review the appropriateness of the request, and if in agreement, take appropriate steps to amend or expunge such information from the child care review service.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

(5) All child care review records must be retained in accordance with the requirements of section 428.10(a)(5) of this Title.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

Graham, William

From: Notice
Sent: Monday, June 01, 2009 9:19 AM
To: 290 Main St.; CONVENTION TWR.; DSS All Users - Exchange; H&K; rath; Statler; all state users
Subject: County Recycling
Importance: High

Effective Monday, June 2nd, Metro Waste Paper Recovery U.S Inc. will be the new recycling contractor for Erie County. As part of the new contract, Metro Waste will be providing the Department of Social Services "locked" recycling totes. The locked totes were an important and necessary element of the new contract required to ensure the confidentiality of all documents generated by our department. Totes will be **locked at all times** until which point they are picked up and returned to Metro Waste's recycling plant.

The new totes are designed with a slit at the top of the lid for individuals to insert documents into the container. Although the slits are large enough to dispose of several papers at one time, staff will no longer be able to "dump" individual recycling boxes/totes into the larger tote. Individuals are reminded to clean the area surrounding each recycle bin to ensure that papers, both whole and shredded, are not left laying on the floor around each bin/tote. If a program area determines it will have a large volume of papers for recycling as a result of purging case files, mass authorization, or any other unique situation which would generate a large amount of recycling paper, the Program Support Unit will have the ability to unlock the totes. Please contact Renee Bienicki in Program Support at extension 8499 with any questions or concerns.

Maintaining our customers' confidentiality is of the highest priority. All customer documents created, generated, copied, produced or received by the department are considered confidential. **Tampering with or disabling the locked totes is a serious violation of department policy on confidentiality and will be treated as such**.

Thank you in advance for your cooperation

* reissued annually and to new employees @ orientation.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES

MEMORANDUM

FROM: Carol Dankert- Commissioner

TO: All Staff

SUBJECT: Use and Protection of Confidential Information

DATE: November 30, 2010

I. **Purpose:**

The purpose of this memo is to remind ECDSS staff of the requirement to assure appropriate protection, access to and disclosure of confidential information maintained in New York State and Erie County systems/databases.

II. **Background:**

In recent months, a number of incidents have occurred regarding inappropriate access to, and disclosure of confidential information stored in State and local district systems/databases.

The confidential information maintained in and/or obtained from OTDA-maintained systems/ databases such as, but not limited to:

- The Welfare Management System (WMS)
- Child Support Management System (CSMS/ASSETS)
- Benefits Issuance Control System (BICS)
- CONGOS
- Commissioners Dashboard

and other such systems, is protected by a myriad of Federal and State statutes and regulations. ***Access to and use of such information by State and local district agencies is strictly limited to authorized employees and legally designated agents, for authorized purposes only.***

Confidentiality and security of personal, private and sensitive information must be maintained by all authorized entities in accordance with all applicable Federal and State laws and regulations. ***Use and disclosure of such information is strictly limited to authorized purposes, such as uses directly connected with the administration and delivery of program services.***

III. **Policy and Program Implications:**

Federal and State program-specific confidentiality and information security rules prohibit unauthorized access and inappropriate dissemination of confidential information. They also

limit the access to and/or dissemination of such information to authorized, legitimate business purposes.

For example:

- Authorized users may not access their own active, closed or archived case records, or those involving a relative, acquaintance, neighbor, friend, partner, co-worker, or other individuals to whom they have no official assignment.

- Authorized users may not disclose information received in their official capacity except in the performance of official job duties and for authorized purposes.

- No one may waive the confidentiality of federal state or county records.

- In certain circumstances, individuals may authorize a third party, such as an attorney or their adult offspring, to have access to their confidential information.

Unauthorized access to, or release of such data may result in civil liability and/or criminal prosecution. Individuals who access such information without authorization, or disclose it beyond authorized official purposes may be subject to disciplinary actions and/or termination.

To assure that all DSS employees with access to personal, private and sensitive information understand the laws and policies related to use, handling and safeguarding of data, training will be provided for all staff in 2011.

ECDSS management must assure proper account and access management practices, are strictly followed by staff. Access must be limited to only those individuals whose job duties require it, and promptly disabled/retracted when such access is no longer warranted, -i.e. the individual leaves the agency or their job functions change.

ECDSS management must also assure the confidentiality and security of such information by employees and third parties, including but not limited to contractors, consultants, temporary employees, researchers and other workers affiliated with third parties who are performing administrative or technical services on behalf of Erie County. Prior to granting a third party individual access to any State information system or confidential information, a Non-Disclosure Agreement (NDA) that defines access terms and conditions must be signed.

IV. Fair Hearing Implications

Confidentiality and information security rules also prohibit unauthorized access and inappropriate dissemination of confidential information in the fair hearing process. For example:

- Clients and their authorized representatives have the right to review their case record before the fair hearing (18 NYCRR 358-3.7). Therefore, a careful and through review of the case record must be completed **before** the record is made available for review to ensure confidential information relating to other clients/cases is not included in the client's case record.

- An ECDSS representative must appear at the fair hearing with the client's case record, and provide a copy of its documentary evidence to the hearing officer, and to

the client or the client's representative. Accordingly, **a careful and thorough review of the case record must be completed** to ensure confidential information relating to other clients/cases is not included in the documentary evidence submitted in the context of the fair hearing.

IV. Information Security and Incident Reporting

OTDA has made safeguarding confidential, personal, private, and sensitive information a priority, to reduce the risk of information security breaches and assure ongoing compliance.

ECDSS management and staff share this critical responsibility, and must fully comply with and abide by Federal and State confidentiality and information security rules.

ECDSS management and staff must at all times be aware of the duty to ensure access to such data is strictly limited to authorized individuals, and is used solely for legitimate business purposes. Failure to do so may result in termination of critical data exchanges-such as the computer matches between OTDA and the Social Security Administration, and Internal Revenue Service,

Unauthorized use may result in information security incident reporting and notification of affected individuals, and/or penalties ranging from loss of access to civil or criminal charges, depending upon the nature and severity of the breach.

Incidents involving the unauthorized access or disclosure of the confidential information in OTDA-maintained systems/databases must be reported to the OTDA Information Security Office.

If a security breach is suspected, an employee is to notify their supervisor of the incident. Supervision will then contact the **ECDSS Quality Analysis and Control Unit**, who will notify the OTDA Information Security Office.

When reporting an incident, please be prepared to provide:

- a central point of contact
- telephone number
- details to the nature of the security breach
  - date
  - time
  - location
  - names of individuals involved

Additional information may be collected to assess the incident and determine appropriate response, reporting, and corrective actions.

Further information regarding information security incident reporting policies and procedures is available on the OTDA intranet at http://otda.state.nyenet/dla/iso/incedentreporting.htm

Questions regarding this memo should be directed to Karen Rybicki, Sr. Program Support Specialist, at ext.7338 or Karen.Rybicki@erie.gov.

Please refer to 10-LCM-17 for additional subject matter.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES
MEMORANDUM

FROM: **Mary Ellen Brockmyre, Assistant Commissioner**

TO: **All Staff in Financial Records Services**

SUBJECT: **Record Access and Disposal**

DATE: **April 8, 2013**

PURPOSE:

The purpose of this memo is to inform Financial Records Services staff of the procedure regarding access and disposal of confidential records.

PROGRAM IMPLICATIONS:

1. The Imaging Unit utilizes space in the Sub-Basement of the Rath Building for temporary retention of imaged records. This space is only available for authorized access, and entry points must be locked at all times. The Department has arranged to have a swipe lock installed. In the interim, a sign-in log has been instituted, and any admission requires approval of authorized staff. DSS staff assigned to the Sub-Basement area are responsible for monitoring entry to the area.

2. Following 60 days of retention, stored records will be placed in locked totes, intended for shredding and disposal. Services cases stored in the Sub-Basement must follow the required schedule for purging records. Staff assigned to purging records are responsible for ensuring that records are placed in locked bins *ONLY*. In the event that there are no locked bins available, or if unlocked bins are delivered to the Sub-Basement, please contact Renee Biniecki at X8499 to rectify the situation.

3. In addition to the above, including areas outside of the Sub-Basement, locked totes ***ONLY*** may be used for disposal of confidential documents, including but not limited to WMS reports. ***Any and all documents containing client information must be secured and disposed of properly using locked totes***.

EFFECTIVE DATE:

These changes are effective immediately.

Erie County Department of Social Services
Memorandum

From: Sandra Neubert, Director of Employment
Michael Gonciarz, Director of Temporary Assistance

To: All Staff Located at 290 Main St.

Date: May 22, 2013

Re: Disposing of Confidential Records

This is a reminder to all staff of the importance of records confidentiality and the disposing of confidential information.

Maintaining our customers' confidentiality is of the highest priority. All customer documents created, generated, copied, produced or received by the department are considered confidential. This includes envelopes, reception message slips, hand written notes, etc.

All confidential information that is being discarded is to be **disposed of daily** into locked recycle totes. Under no circumstances is any client information to be discarded in desk garbage cans or left overnight in recycle boxes at desks or copiers.

Please do not over fill the totes. Each floor will have 2 totes which are to be filled no more than 2/3's full. If there are any questions or concerns regarding this policy please address them through your respective supervisor. Thank you.

MEMORANDUM
ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES

TO: **All Social Services Staff**

FROM: **Mary Ellen Brockmyre, Assistant Commissioner**

DATE: **June 10, 2013**

SUBJECT: **Staff Expectations for Maintaining Confidentiality and Proper Disposal of Records**

Please review. All staff must adhere to the following expectations related to Confidentiality and Information Security:

- The Department of Social Services will only use locked bins for the purpose of disposing records.
- All personal shred bins must be emptied into a locked blue tote at the end of each workday.
- Locked blue totes should only be filled to a two-thirds point.
- All locked bins must be placed in secure work areas and in a location designated by management.
- Every staff member is responsible for concealing records and computer screens, including covering or filing case information located on workspaces and logging off of computer while it is not in use.
- During transport of records within or in between buildings, staff must maintain records such that no case information is visible.
- Doors should always be locked in unattended work areas.
- Staff utilizing fax machines and copiers should promptly pick up work.
- Every staff person is personally responsible for maintenance and proper disposal of records for which they have custody. Confidential materials ready for disposal must be placed in a locked bin.
- In the event you notice a violation, your duty is to notify a supervisor, moving up to the unit's management representative, if prompt corrective action does not occur. We have a clear shared responsibility to maintain confidentiality of all records.
- There are to be no changes to the above listed expectations without an explicit written update from the DSS Commissioner's Office.

Separate from this e-mail you will be receiving an e-mail with the "ECDSS Confidentiality and Information Security Policy" attached. The e-mail will include a requirement to indicate that you are informed of and agree to adhere to these policies.

Finally, there will be an on-line training class, offered by OCFS, entitled "Information Security Awareness". This is a computer based class that can be taken at your desk. All staff will be required to take this on-line course annually. You will automatically be registered for this class, it can be taken anytime by the established deadline, and requires approximately 45 minutes to complete. You will receive separate notification of your registration for this computer course.

ERIE COUNTY

DEPARTMENT OF SOCIAL SERVICES

CONFIDENTIALITY AND INFORMATION SECURITY POLICY

June 26, 2013

Table of Contents

Scope	Page 3
Purpose	Page 3
I. Staff Expectations for Maintaining Confidentiality and Proper Disposal of Records	Page 3
II. Information Security and Incident Reporting	Page 5
III. Department Wide Confidentiality Guideline	Page 5
1. Confidential Information Disclosure	Page 5
2. Sharing Information With Coworkers	Page 5
3. Outside Agency Access	Page 6
4. Department Policies	Page 6
IV. Confidentiality / Access / Release of Information From Databases	Page 7
V. Proper Disposal of Confidential Records	Page 10
VI. HIPAA	Page 10
VII. What Are "DSS Records"	Page 10
VIII. Penalties for Breaches of Confidentiality	Page 15
IX. Staff Acceptance and Agreement	Page 15

SCOPE:
All Erie County Department of Social Services (ECDSS) permanent, part-time, contract, and temporary employees including, but not limited to, caseworkers, social workers, examiners, attorneys, supervisors, support staff and administrative staff.

PURPOSE:
The purpose of these policies and procedures is to provide employees of the Erie County Department of Social Services with confidentiality guidelines. It is intended to provide guidance to staff to establish consistency and integrity in expectation for actions while supporting best practices in working to maintain the highest standards of confidentiality and privacy practices.

It is a Department wide duty to train, monitor, investigate and refresh ECDSS employees to attain and maintain a conscience of carefulness regarding personal information of our recipients. It is each staff member's responsibility to protect the confidentiality of all information regarding applicants, recipients, clients, and participants involved in any program administered by the Erie County Department of Social Services. All employees will be required to complete annual training in order to have access to confidential state information and as a condition of employment.

If you have any questions regarding this policy or if you are unclear as to how it applies to a particular situation, please discuss it with your immediate supervisor or contact the First Deputy Commissioner.

I. Staff Expectations for Maintaining Confidentiality and Proper Disposal of Records

- The Department of Social Services will only use locked bins for the purpose of disposing records.
- All personal shred bins must be emptied into a locked tote at the end of each workday.
- Locked totes should only be filled to a two-thirds point.
- All locked bins must be placed in secure work areas designated by management.
- Every staff member is responsible for concealing records and computer screens, including covering or filing case information located on workspaces and logging off of computer while it is not in use.
- During transport of records within or in between buildings, staff must maintain records such that no case information is visible.
- Doors should always be locked in unattended work areas.
- Staff utilizing fax machines and copiers should promptly pick up work.
- Every staff person is personally responsible for maintenance and proper disposal of records for which they have custody. Confidential materials ready for disposal must be placed in a locked tote.
- In the event you notice a violation, your duty is to notify a supervisor, moving up to the unit's management representative, if prompt corrective action does not occur. We have a clear shared responsibility to maintain confidentiality of all records.

- There are to be no changes to the above listed expectations without an explicit written update from the DSS Commissioner's Office.

A. Expectations while Conducting Work

- Records should only be removed from office area for a sound business reason and records being transported should only include the minimal amount required to conduct activity.
- During transport of records within or in between buildings, staff must maintain records such that no case information is visible. Expandable Wallets are available to all field staff for records transport and must be utilized. When an employee has to be in territory, great care should be given to protecting confidential information. The employee is to take the minimum necessary information in order to do their task, to have the information inside a file or folder and to lock the information in the trunk of their vehicle.
- When staff does not intend and/or it is unreasonable to return to worksite after completion of fieldwork, they are responsible for ensuring the security and confidentiality of the records. The records should either be kept in a locked, inaccessible area of the person's home or in a locked vehicle trunk.
- For access of case information on databases and through county and state systems, staff is responsible for policy compliance related to records security and the use of state equipment and systems. http://sharepoint.erie.gov/policies/Technology/IT_Security_Policy_v3.1.pdf
- There should be no texting of case identifying information.

B. Expectations during Transport of Records within or in between Buildings

- During transport of records within or in between buildings, staff must maintain records such that no case information is visible.
- Expandable Wallets are available to all staff for records transport and must be utilized.
- At all times during transport, staff are responsible for ensuring privacy and confidentiality and they should not leave records unattended.
- When mail is in vehicle during delivery and pick up times, the vehicle should be locked and records secured.
- Bins with client records and general mail should have all information covered during transport or material turned over so that no information is visible.

C. Expectations in Office Areas that have Service Beneficiary Access

- Every staff member is responsible for filing case information located on workspaces and logging off of computer while it is not in use.
- No confidential material should be left visible in work areas.
- Staff should conduct interviews in private space, if available. If unavailable, staff should use discretion while conducting interviews and business with service recipients.
- Discussion of cases or case related information shall be done discretely and out of earshot of others not entitled to the information.
- Discretion should also be used while discussing case information on phone with service recipients, related parties or supervisors.

II. Information Security and Incident Reporting

OTDA has made safeguarding confidential, personal, private, and sensitive information a priority, to reduce the risk of information security breaches and assure ongoing compliance.

Erie County Department of Social Services management and staff share this critical responsibility, and must fully comply with and abide by Federal and State confidentiality and information security rules.

Erie County Department of Social Services management and staff must at all times be aware of the duty to ensure access to such data is strictly limited to authorized individuals, and is used solely for legitimate business purposes. Failure to do so may result in termination of critical data exchanges - such as the computer matches between OTDA and the Social Security Administration and Internal Revenue Service (IRS). Unauthorized use may result in information security incident reporting and notification of affected individuals, and/or penalties ranging from loss of access, to civil or criminal charges depending upon the nature and severity of the breach.

Incidents involving the unauthorized access or disclosure of the confidential information in OTDA-maintained systems/databases must be reported to the OTDA Information Security Office.

If a security breach is suspected, an employee is to notify their supervisor of the incident. Supervision will then contact the Director of Legal Affairs, who will notify the OTDA Information Security Office. When reporting, please be prepared to provide a central point of contact, telephone number, and details as to the nature, location, date, time and individuals involved in the security breach. Additional information may be collected to access the incident and determine appropriate response, reporting and corrective actions.

III. Department Wide Confidentiality Guidelines

1. Confidential Information Disclosure

Employee Access to Information: Employees are only permitted access to client and case-related information that directly relates to each individual employee's specific employment responsibilities in the Department and is necessary to perform duties assigned. Any client or case-related information available to employees during the course of their work is protected under confidentiality restrictions. Except in certain authorized circumstances, staff may not release any information to another person or agency without appropriate written authorization.

2. Sharing Information with Coworkers

Caution in Disclosing: Case conferencing and the sharing of information between coworkers are allowable if the disclosure is necessary to perform required work responsibilities. Employees must

be aware that casual conversation with coworkers and sharing of information outside a "need-to-know" basis may result in a violation of confidentiality. Caution should be practiced and even mentioning case-related situations without the names of individuals involved may reveal the identity of the parties and result in a violation of confidentiality. Employees must be diligent in their efforts to protect confidential information.

a. **Family and Friends Procedure:**
It is strictly forbidden for any employee to take any action whatsoever on a case involving a relative or friend. Nor shall any employee take any action on a case in which the employee has a personal or financial interest (e.g. that of an employee's tenant). Any employee who receives an application or a case which involves a relative, a friend or someone with whom the employee has a personal or business relationship (e.g. a tenant) must immediately return it to his/her supervisor. The supervisor must reassign the case to another worker. There is a wide variety of information available to us via WMS, CSMS and the other State and local databases which is to be accessed only as needed to perform your job. Obtaining information for any non-work related reason is a serious violation of confidentiality.

Conferencing Between Program Areas: Information sharing between two or more employees across programs within the Department is permissible and encouraged for the purposes of joint assessments and coordination of services. Care must be given in how this information is used and what is documented in the case record. Documentation of information acquired from a case conference must be limited to the essential pieces of information that pertain to the specific program (For example: The reporting party of a CPS referral should never be documented in a TANF case record). Also, if case conference notes are taken or email communications are relayed between case managers, they are confidential and used only as reminders; they must never be filed in a client's case record.

3. Outside Agency Access:

Subpoena of Case Record: All subpoenas must be sent to the Director of Legal Affairs, Office of Counsel first for review before delivery and/or presentment to any Court.

4. Department Policies:

A. It is the policy of the Erie County Department of Social Services that employees are prohibited from obtaining, releasing or using confidential client information from case records or other sources for purposes not specifically related to the administration of services as authorized by law or regulation.

B. It is the policy of the Erie County Department of Social Services that all employees will operate on a "need to know" business necessity basis. Employees are entitled to have access to the information needed to do their particular job with their particular cases or clients. Employees will share confidential information only to authorized persons who have a legal and reasonable need to know the information in order to perform their jobs.

C. When moving materials between buildings or between floors, please be sure that no case specific information is visible. In addition, employees must not casually mention situations related to work, which could possibly identify an individual, nor should names of applicants, clients, foster parents, or birth parents ever be mentioned outside of work. When utilizing inner office mail, all information should be put in an envelope that seals.

D. **Violations and/or Breaches of Confidentiality** will be handled through internal investigations conducted or directed by the Office of the Commissioner and the Office of Counsel. Founded incidents will be documented in an employee's personnel file and may result in a counseling memo and other discipline including potential termination of employment, or other disciplinary action. A violation of confidentiality will be considered as a cause for disciplinary action up to and including suspension or termination of employment. A violation of confidentiality may also be punishable under criminal and civil law (penalties for unauthorized use or disclosure of records are provided in New York Penal Law and also New York Social Services Law). Any employee who attempts to obtain or reveal any information that relates to self, friends, relatives, acquaintances or others, known inside or outside the office, from department records, cases, databases or other sources, will be subject to disciplinary action. This will be true whether the information was sought or obtained solely due to personal curiosity or whether the information was used or shared with the client or other outside party.

E. Only authorized Erie County Department of Social Services employees are permitted in employee work areas during working and non-working hours. To protect confidential information that is readily accessible in the office environment, all visitors, including staff relatives, companions and friends, must be received in a reception area and/or break room, if available.

F. Staff are also reminded that **any and all** requests from elected officials, media law enforcement or other governmental agencies for release of client specific information must be referred to the Commissioner's Office before authorization is granted. This includes complaint resolutions, statistics and case specific information. We will advise the appropriate worker or supervisor how to respond. In the event of a media inquiry, the Commissioner's Office will handle the inquiry directly. Members of the media have no greater right or access to client or case-related information than the general public. The Director of Legal Affairs will work under the supervision of the Commissioner's Office to determine the content, extent and manner of disclosure in respond to a media inquiry to ensure no violation of confidentiality occurs.

G. The Commissioner's Office, working with the Director of Legal Affairs for the Office of Counsel, determines whether or not an outside party has the legal right to review any documents in the event of an investigation.

H. Erie County employee records should also be give the same level of attention and from inappropriate viewing, use and disclosure as outlined above.

I. When, in the course of their employment, an employee has to be in territory, great care should be given to protecting confidential information. The employee is to take the minimum necessary information in order to do their task, to have the information inside a file or folder and to lock the information in the trunk of their vehicle.

IV. CONFIDENTIALITY AND ACCESS TO AND/OR RELEASE OF INFORMATION FROM CONFIDENTIAL DATABASES (STATE ADMINISTRATIVE DIRECTIVES)

All Erie County Department of Social Services employees are reminded of the requirement to assure appropriate protection, access to and disclosure of confidential information maintained in New York State and Erie County systems/databases. Every day, the children and families we serve trust us with

their personal and highly confidential information. Safeguarding that information is an integral component of our service delivery, and a reflection of our professionalism. Whether the information is obtained through a face-to-face contact, telephone call, letter, or by accessing a computer database, strict confidentiality rules apply. Confidential information, including that contained in State and local government databases is protected by numerous federal and State statutes, regulations and policies. OCFS and OTDA have made safeguarding confidential, personal, private and sensitive information a priority; to both reduce the risk of information security incidents and breaches, and to facilitate on-going compliance.

1. Background

The confidential information maintained in and/or obtained from OTDA-maintained systems/databases such as, but not limited to the Welfare Management System (WMS), Child Support Management System (CSMS/ASSETS), Benefits Issuance Control System (BICS), COGNOS, CCTA, Commissioners Dashboard, and other such systems, is protected by numerous Federal and State statutes and regulations. Access to data maintained in OCFS confidential databases including but not limited to CONNECTIONS, LTS, WMS, CCRS, ASAP, APS-Net, CBVH CMS, Register of the Blind, JJIS, ICPC, OCS, SSA, any and all NSYAS databases, and the Putative Father Registry is strictly limited to authorized employees and legally designated agents for ***authorized purposes only.*** This means that if you access such a case or other personally identifiable data without having an official OTDA or OCFS purpose, you may be subject to civil liability and/or criminal prosecution, or disciplinary action including termination.

Access to and use of such information by State and local district agencies is <u>strictly limited</u> to authorized employees and legally designated agents, for authorized purposes only.

Confidentiality and security of such personal, private and sensitive information must be maintained by all authorized entities in accordance with all applicable Federal and State laws and regulations. ***Use and disclosure of such information is <u>strictly limited</u> to authorized purposes, such as uses directly connected with the administration and delivery of program services.***

2. Policy and Program Implications

Federal and State program-specific confidentiality and information security rules prohibit unauthorized access and inappropriate dissemination of confidential information. They also limit the access to and/or dissemination of such information to authorized, legitimate business purposes. For example:

a. Authorized users may not access their own active, closed or archived case records, or those involving a relative, acquaintance, neighbor, friend, partner, co-worker, or other individuals to whom they have no official assignment.

b. Authorized users may not disclose information received in their official capacity except in the performance of official job duties and for authorized purposes.

c. No one may waive the confidentiality of federal, state or county records.

d. In certain circumstances, individuals may authorize a third party, such as an attorney or their adult offspring, to have access to their confidential information.

Unauthorized access to, or release of such data may result in civil liability and/or criminal prosecution. Individuals who access such information without authorization, or disclose it beyond authorized official purposes may be subject to disciplinary actions and/or termination.

Erie County Department of Social Services management must assure proper account and access management practices are strictly followed by staff. Access is limited to only those individuals whose job duties require it, and promptly disabled/retracted when such access is no longer warranted – i.e. the individual leaves the agency or their job functions change.

Erie County Department of Social Services management must also assure the confidentiality and security of such information by employees and third parties, including but not limited to contractors, consultants, temporary employees, researchers and other workers affiliated with third parties who are performing administrative or technical services on behalf of the County of Erie. Prior to granting a third party individual access to any State information system or confidential information, a Non-Disclosure Agreement (NDA) that defines access terms and conditions must be entered into.

3. Fair Hearing Implications

Confidentiality and information security rules also prohibit unauthorized access and inappropriate dissemination of confidential information in the fair hearing process. For example:

a. Clients and their authorized representatives have the right to review their case record before the fair hearing (18 NYCRR 358-3.7). Therefore, a careful and thorough review of the case record must be completed **before** the record is made available for review to ensure confidential information relating to other clients/cases is not included in the client's case record

b. An Erie County Department of Social Services representative must appear at the fair hearing with the client's case record, and provide a copy of its documentary evidence to the hearing officer, and to the client, or the client's representative. Accordingly, **a careful and thorough review of the case record must be completed** to ensure confidential information relating to other clients/cases is not included in the documentary evidence submitted in the context of the fair hearing.

4. Special rules apply to access to and disclosure of identifiable information regarding youth in the care and custody of OCFS or the ECDSS.

Information about individual youths in OCFS' custody cannot be disclosed, including information as to whether a particular youth is or has been in OCFS' custody. Therefore, information identifying an OCFS youth to the media, a member of the state or local legislature, or the general public may not be disclosed. "We are not authorized by law to disclose whether or not any individual was ever under our jurisdiction." Information about individual youth in

foster-care cannot be disclosed. Therefore, information identifying a foster youth to the media, a member of the state or a local legislature, or the general public may not be disclosed.

Any exception to the above must be approved by the OCFS Legal Division prior to disclosing any information.

V. Proper Disposal of Confidential Records

Erie County is obligated by law and the administration is committed to the protection and security of confidential records and information created or obtained in the fulfillment of services provided to the public. Any records that can be disposed of pursuant to the records retention guidelines must be disposed of in a method that assures that no confidential information is made available to any person who is not entitled to such information. Data (especially paper documents) that is confidential or sensitive should never be disposed of in the garbage or in the regular blue paper recycling bins.

Records that contain confidential information must be placed in a secure tote (locked). Such materials are then to be taken form the work site by the contractor who will destroy the records in such a way that confidential information will not be disclosed to any person. If a secure tote is not available at a work location staff should advise management.

Under no circumstances shall confidential information be removed from a work site or a tote without permission of the department head responsible for such records. Under no circumstances shall confidential records be removed from the care and custody of a department or removed from authorized county work sites without the permission of the department head responsible for such records.

VI. HIPAA

Confidentiality requirements under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) apply to health care information (HCI) as defined by HIPAA. All of the Medicaid programs are subject to HIPAA, by regulation, including the application process. This includes applications for Medicaid which result in a denial, as well as those applications for multiple benefits, such a Medicaid, cash assistance or SNAP. As long as the application requests Medicaid benefits, it is HIPAA covered. Non-Medicaid programs may be touched by HIPAA, to the extent that they involve the acquisition of health information from sources (such as a hospital) that are themselves subject to HIPAA. It is important to remember that New York State already has a very restrictive statutory and regulatory structure with regard to medical records. For Erie County specific guidelines please refer the ***Erie County HIPAA Privacy Policy.***

VII. What Are "DSS Records?"

The law and regulations concerning DSS records are scattered throughout State and Federal Law and there is some overlap. In addition to the information that the Department's caseworkers gather by their own observation, they also obtain information from other service providers in the medical, mental health, substance abuse, and other professions. This information often has its own confidentiality requirements.

Adult Protective Services:

Adult Protective records are covered in Social Services Law (SSL) §473-e. Records include referrals as well as any other information obtained, including written reports, names of sources and photographs. SSL §473-e (2). 18 NYCRR 457.16(g) further defines "record" as any information in the possession of the DSS regarding the subject of a report. All of this information is confidential and, unless released with the written

permission of the subject of the report or their authorized representative, may only be released in certain circumstances.

Child Protective Records:

The specific confidentiality statute for Child Protective records is found in SSL §422. This statute sets out the law related to the statewide central register of child abuse and maltreatment. SSL §422(4)(A) states that not only are the state central register reports confidential, but so is any other information, reports written, or photographs taken regarding such reports that are in the possession of State DSS (now OCFS), the local department, or the commission on quality of care for the mentally disabled. This would include the local district CPS file. Pursuant to SSL §422(12), it is a class A misdemeanor for a person to willfully permit or encourage the release of any information from the local or statewide register to persons or agencies not permitted to receive the information by title 6 of article 6 of the Social services law.

SSL §422(4)(A) goes on to list 25 exceptions to the confidentiality statute. These exceptions cover both different individuals and/or agencies that may be entitled to the information, as well as different circumstances under which the records may be reviewed.

Foster Care Records:

Foster care records are specifically covered by SSL §372. SSL §372(3) and (4) state that foster care records are confidential subject to the provisions of CPLR article 31.

Where DSS is a party in a Family Court proceeding, such as in a foster care review, termination of parental rights, or Article 10 extension of placement, the law guardian and respondent's attorney have discovery rights.

Adoption Records:

Two statutes are applicable on adoption issues: SSL Law §372 and Domestic Relation Law §114. It is the position of OCFS that DRL §114 is controlling. These records may only be disclosed by court order. A grand jury is entitled to subpoena adoption records without the necessity of obtaining a court order.

Preventive Services:

Preventive services records are discussed in SSL §§409 and 409-a. SSL §409 defines "preventive services," and SSL §409-a discusses confidentiality of preventive services record in the context of their release to the comptroller's office of the State or of the City of New York, or of the county officer designated to perform that county's auditing function.

18 NYCRR 423.7(b) states that preventive services records are confidential, and further states that these records may only be open to the inspection of: (1) New York State DSS (OCFS); (2) the social services district; (3) a preventive service or authorized agency providing service to the child or the family; (4) any person or entity upon an order of a court of competent jurisdiction; or (5) any other person or entity providing or agreeing to provide services to the child or the child's family upon the written consent of the child or the child's parent executed in accordance with 18 NYCRR 423.7(e). 18 NYCRR 423.7(e) contains the specific requirements of the consent.

As with other DSS records, a subpoena or other type of order for preventive services records must be obtained on notice to DSS, and must be issued by a judge.

Child Support Enforcement:

Child support enforcement records are confidential pursuant to SSL §111-v and 42 USCA 654(26). However, there are also specific limitations attached to different sources of information (i.e., federal tax

return information, FIDM information). Information obtained by the child support worker or program is to be maintained in a confidential manner and shall not be disclosed except for the purpose of, and to the extent necessary to, establish paternity, or establish, modify or enforce an order of support, for administration of the child support program, or as specifically authorized by other laws. SSL §111-v(5) states that the safeguards established in the section apply to local social services districts and contractors as well as to the State agency. Unauthorized disclosure of information can result in employee disciplinary proceedings, civil liability, and prosecution as a class A misdemeanor. SSL §111-v(2)(d), (3), (4).

The current New York regulation related to the confidentiality of child support records is found in 18 NYCRR 347.19. This regulation states that all information obtained by the agency is confidential, whether or not it is contained in the written record or the CSMS/ASSETS record.

In general, child support information may be used or disclosed for child support purposes. Child support workers are permitted to access and use child support information to the extent necessary to perform their duties. There are two principal limitations on the use and disclosure of child support information for child support purposes:

1. The social services law prohibits release of location or employment information in circumstances where the physical or emotional wellbeing of a party or the child may be put at risk. SSL 111-v 2. (2)(a)(2), (3). Examples would be situations in which there is an order of protection, or the issue of family violence or good cause has been raised by a party.
2. IRS information may not be disclosed except as permitted by federal law. 26 USCA 6103(L)(6), (8).

The state and federal parent locator services contain confidential location and employment information. Information received from the FPLS or SPLS may only be disclosed to authorize persons for authorized purposes. 42 USCA 653, 663: 45 CFR 302.35. The rules are specific about what information may be disclosed for each purpose.

Third Party Disclosure: Child support information may not be disclosed to third parties without 1) a written authorization from a parent; or 2) specific statutory authorization

Disclosure to Other Governmental Agencies or Program: The issue of sharing information with other state agencies is complicated by state and federal laws limiting disclosure of child support information based on the source of that information. As a general rule, the CSEU may disclose information to specified DSS agencies **as necessary** to carry out their agency functions under plans or programs under titles IV (i.e., TANF and foster care), XIX (MA), or XXI (Child Health Plus) of the federal Social Security Act, and SNAP. However, information exchanges must be based on agreements setting out the frequency, scope, and manner of information exchanges, and the limitations on use and re-disclosure of child support information. Child support information may not be re-disclosed unless authorized by law and may only be used for the purpose for which it is provided. In addition, child support information from the following sources may not be shared at all:

- Records or information of other state and local agencies which may not be re-disclosed pursuant to state or federal law (i.e., state tax data);
- Business or financial records of corporations, companies or other entities;
- Records of financial institutions and utility or cable companies;
- federal tax return information, unless independently verified; and
- Information obtained from financial institution data matches.

There are a few other specific rules:

- Information from the national or state directory of new hires in CSMS/ASSETS may be disclosed to title IV-B and IV-E agencies to locate parents or putative fathers for the purposes of establishing paternity or establishing parental rights with respect to a child;
- Information from the national directory of new hires or federal or state case registry may be disclosed to agencies administering plans or programs under titles IV-A, IV-B, IV-D and IV-E of the federal Social Security Act for purposes related to administration of those programs; and
- An employee's name, SSN and address, employer's name, address, and federal employer identification number obtained from the state directory of new hires may be disclosed to the IV-An agency for the purpose of verifying income and eligibility.

Temporary Assistance:

Social Services Law §136 contains the general provisions related to the confidentiality of public welfare records. Regulations pertaining to the confidentiality of temporary assistance records are found in 18 NYCRR 357. While that regulation applies to all DSS records generally, it is specifically applied to temporary assistance records. 18 NYCRR 357.1(a) indicates that the information that is to be kept confidential is all information secured by the agency whether or not it is contained in the written record.

DSS may also disclose information to federal, state or local officials, pursuant to 18 NYCRR 357.3(e). This section includes grand juries, law enforcement officers and administrative staff of public welfare agencies. However, 18 NYCRR 357.2(a) states that the disclosures may only be made for purposes directly connected to the administration of public assistance.

Medicaid information is also confidential pursuant to SSL §§367-b and 369. SSL §367-b(4) directs you to SSL §136 for the procedure regarding disclosure. Under these statutes it appears that records could be released under the authority of a valid release executed by the recipient where the disclosure is "necessary for the proper administration of public assistance programs." SSL §367-b(4). GIS 00 MA/22, dated October 16, 2000 states that the administration of the program includes four activities: 1) establishing eligibility; 2) determining the amount of medical assistance; 3) providing services for recipients; and 4) fraud and abuse activities. Medicaid records are also subject to HIPAA, and are treated more extensively in the HIPAA policy. In addition to a general reference to Social Services Law §136, 98 ADM-3 also issues some confidentiality guidelines specific to domestic violence cases. This includes the domestic violence liaison maintaining a separate file for their cases.

18 NYCRR 357.3(f)(1) actually states that a public welfare agency should immediately consult its legal counsel upon receipt of a subpoena for temporary assistance records.

Children's Detention Center:

County detention facilities are authorized under Executive Law (EL) Art. 19-g and County Law (CL) §218-a. Under these statutes, and Social Services Law (SSL) §§462(2)(a and c), county detention centers are governed by the regulations of the Division for Youth (the Office of Children and Family Services). The "DFY" statutes and regulations have not yet been converted to "OCFS" statutes and regulations, so the "DFY" statutes and regulations still apply.

The confidentiality laws and regulations of division for youth records are found in EL §501-c and 9 NYCRR 168.7. Both state as a general rule, that DFY records are confidential and may not be disclosed except to certain authorized persons and/or on certain conditions. Any subpoena for children's center records must be done on motion, with notice to the County, under the authority of CPLR 2307.

In terms of non-subpoena requests for information, consult EL §501-c and 9 NYCRR 168.7. Please note well that EL §501-c(1)(b) states that you may not even acknowledge that a youth was in your custody, except as allowed under EL §501-c(1)(a). See also 9 NYCRR 168.7(b) which states that unless you receive a

request that is included in one of the confidentiality exemptions, the correct response shall be "We are not authorized by law to disclose whether or not any individual was ever under our jurisdiction."

WMS Records:

WMS (Welfare Management System) is the State sponsored computer program designed to receive, maintain and process information relating to individuals who have applied for, or are in receipt of, any form of public assistance benefits. SSL §21(3) states that WMS information is confidential and may only be provided to persons or agencies considered entitled to such information pursuant to SSL §136.

A further limitation upon WMS access can also be gleaned from SSL §21(1) which states that WMS is designed "for the purpose of providing individual and aggregate data to such districts to assist them in making eligibility determinations and basic management decisions, to the department to assist it in supervising the local administration of such programs, and to the governor and the legislature as may be necessary to assist in making major administrative and policy decisions affecting such program

Disclosure to Federal and State Agencies:

A social services district might also receive requests for records from state or federal agencies. Some of these agencies have statutory or regulatory authority to issue subpoenas or otherwise obtain records.

Other Confidentiality Statutes and Privileges:

The Department of Social Services staff is made up of professionals who are all subject to some form of confidentiality restrictions. There are some variations in the confidentiality rules that pertain to physicians, psychologists or certified social workers. There are also several sources of confidentiality rules that each profession is obliged to follow. Social workers, physicians and psychologists are subject to the rules of the Board of Regents, specifically part 29, which is found in volume 8 of the New York Code of Rules and Regulations (NYCRR), which pertains to unprofessional conduct. Because of the way in which the psychologist/patient privilege is written, you must also apply the attorney/client privilege to psychologists. Attorneys are subject to the Code of Professional Responsibility, a series of ethical canons and disciplinary rules that are contained in an appendix to the state Judiciary Law. Civil Practice Law and Rules (CPLR) Article 45 (Evidence) contains separate (and different) evidentiary privileges for each profession. In New York, the CPLR privileges apparently extend beyond legal proceedings. Thus, the CPLR privilege must be considered not only in such situations as courtroom testimony, but also in the context of non-legal situations, including disclosure of information of a client intending to commit a crime or harm themselves or another. Because of these variations, each is treated separately.

Other Records That Become Part Of A DSS FILE:

Because DSS casework often involves contact with medical, mental health, substance abuse and other service providers, it is inevitable that these records find their way into DSS files. These records become part of the DSS file, but also retain their own confidentiality rules.

***HIV/AIDS Records*:** The main statute concerning HIV and AIDS related information is Article 27-F of the Public Health Law (PHL). PHL §2782 obliges DSS to keep HIV/AIDS information that it obtains in the course of providing social services confidential. PHL §2782 provides a list of exceptions to this general rule, and includes persons who have a valid release; authorized agencies in connection with foster care or an adoption; a law guardian appointed under the social services law or family court act, with respect to information concerning the child they are representing; and a person to whom disclosure is ordered by a court of competent jurisdiction pursuant to PHL §2785. There are many other exceptions, so it is worthwhile to keep a copy of this statute handy. Relevant rules and regulations are found in 10 NYCRR 63.

***Medical Records*:** The statute concerning access to medical records is found in Public Health Law 18. This statute defines "patient information" and includes almost everything concerning an examination or health assessment, except for mental health information (which has its own confidentiality protection); personal notes and observations of a health care practitioner maintained by that practitioner; records from another practitioner; and data disclosed in confidence. PHL §18 (1)(e). PHL §18 (6) obliges third parties to keep medical information that they receive confidential.

***Mental Health Records*:** Mental Hygiene Law (MHL) §33.13 covers access to clinical records. MHL §33.13[c] states that patient records shall not be released except to certain listed agencies and individuals, or upon a court order made upon a finding that the interests of justice significantly outweigh the need for confidentiality. Once DSS has obtained mental health records, they must keep them confidential under the same limitations that the mental health provider operates under. MHL §33.13(f). The HIPAA regulations also refer to the confidentiality of psychotherapy records.

***Substance / Alcohol Abuse Records*:** Mental Hygiene Law §22.05[b] (effective October 5, 1999) states that all records of identity, diagnosis, prognosis, or treatment of an individual in connection with the person's receipt of chemical dependency services are confidential. The records may only be released under the provisions of the Public Health Law, any other state or federal law or court order.

VIII. Penalties for Breaches of Confidentiality:

The only breach of social services record confidentiality that is designated as a crime is for the unauthorized release of child protective information. Social Services Law §422(12) designates that release as a Class A Misdemeanor. However, as paper records are increasingly giving way to electronic records, computer crimes under Penal Law are now coming into play. The various computer crimes are found beginning at Penal Law §156.

IX. Staff Acceptance and Agreement

By clicking on the appropriate link below, I acknowledge that I have received, reviewed and agree to comply with the policies, guidelines and procedures outlined in this document.

NOTE: You may receive warnings like "Potential Security Risks" during this process – Please click "**Open**" or "**OK**" to proceed. Do Not click "Cancel" as this will discontinue the process.

Local Machine Users:

Click Here (some PCs may have to "Ctrl + Click") to access the Acknowledgement screen.

State Machine (Connection) Users:

Click Here (some PCs may have to "Ctrl + Click") to access the Acknowledgement screen.