

# **Disclosure Analysis Guidelines**

## **List of Appendices**

### **Appendix 1 – Analyzing Requests for DHS Child Welfare Records**

### **Appendix 2 – Statutes, Rules and Federal Regulations**

- 2.a ORS 409.225** Confidentiality of child welfare records, files, papers and communications
- 2.b ORS 419B.035** Confidentiality of records; when available to others
- 2.c ORS 430.399** Confidentiality of drug and alcohol treatment information
- 2.d ORS 179.505** Disclosure of written accounts by health care services provider
- 2.e ORS 419B.881** Disclosure; scope; when required; exceptions; breach of duty to disclose
- 2.f ORS 418.642** Confidentiality of information about person who maintains foster home; exceptions; rules
- 2.g ORS 419A.257** Disclosure to district attorney and other state and county entities
- 2.h ORS 419B.100** Jurisdiction; bases; Indian children
- 2.i ORS 419B.500** Termination of parental rights generally
- 2.j ORS 411.320** Disclosure and use of public assistance records limited; contents as privileged communication; exceptions
- 2.k ORS 419A.255** Maintenance; disclosure; providing transcript; exceptions to confidentiality
- 2.l ORS 419A.102** Access to confidential information by boards; procedure
- 2.m ORS 419A.170** CASA Appointment; duties; immunity; access to information; CASA Fund; rules
- 2.n ORS 419B.875** Parties to proceedings; rights of limited participation; status of grandparents; interpreters
- 2.o ORS 192.445** Nondisclosure on request of home address, home telephone number and electronic mail address; rules of procedure; duration of effect of request; liability; when not applicable
- 2.p ORS 411.117** Requirements when applicants or recipients victims of domestic violence; identification
- 2.q OAR 407-014-0020** Uses and Disclosures of Client or Participant Protected Information

## **Appendix 3 - Common Federal and State Statues Applicable to Child Welfare Files**

## **Appendix 4 – Request for Access to Records**

## **Appendix 5 – Authorization**

**5.a 2099** Authorization for Use and Disclosure of Information

**5.b 2099i** Instructions for Completing the Authorization for Use and Disclosure of Information

## **Appendix 6 – Definitions of Disclosure**

## **Appendix 7 – Policies and Memorandum**

**7.a III-F.1.6** Inspection and Copying of Records

**7.b DHS-010-010** Public Record Request and Fee

**7.c DHS-100-002** Client Privacy Rights

**7.d CW-IM-09-019** Release of the CF 307 Assessment to Parents

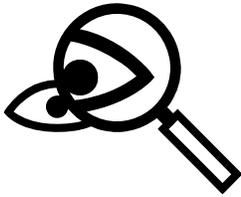
**7.e I-A.3.2** Confidentiality of Client Information

## **Appendix 8 – Memorandums of Understanding**

**8.a DHS and Court Appointed Special Advocate**

**8.b DHS and Citizen Review Board**

## **Appendix 9 – Summary and Guidance on Compliance with 42 CFR (federal regulations regarding alcohol and drug records)**



## ANALYZING REQUESTS FOR DHS CHILD WELFARE RECORDS

- A. What records are requested?
- B. What form is the “request”?
  1. Court Order
  2. Subpoena – criminal, civil, domestic relations, juvenile court
  3. Public Records Request
  4. Written or Verbal
- C. Does DHS Child Welfare possess/control the records?
- D. How many records does DHS possess (in inches)? What types of specific documents are contained in the records.
- E. Who is the requestor? What is the requestor’s relationship to the subject(s) of the records? Why does the requestor want the records?
- F. Are the records requested for use in a legal proceeding? What is the nature of that proceeding?
- G. Does the requestor have a right to receive any portion (or all) of the records or consent to disclosure of the records? Analyze as follows:
  1. What Statutes apply? Refer to outline listing applicable statutes.
  2. To what portion(s) of the records do the statutes apply?
  3. Are there applicable administrative rules? (See OAR 413-010-0000 through OAR 413-010-0075)
  4. To what portion(s) of the records do the rules apply?
  5. Pursuant to statute or administrative rule is DHS required or permitted to disclose any (or all) of the records?
 

If DHS is permitted, but not required, to disclose the records, how does DHS want to exercise its discretion? If DHS is permitted, but not required, to disclose the records, how does DHS want to exercise its discretion?
  6. Has the requestor signed an authorization to release records?
    - a. Is the authorization legally sufficient?
    - b. Is the requestor authorized to sign an authorization to disclose the records?
    - c. To what portion of the records does the authorization apply?
    - d. Is an authorization the proper way to permit disclosure? (ie: authorization is not the proper way to disclose CPS assessments.)

**409.225 Confidentiality of child welfare records, files, papers and communications; when disclosure required.**

(1) In the interest of family privacy and for the protection of children, families and other recipients of services, the Department of Human Services shall not disclose or use the contents of any child welfare records, files, papers or communications that contain any information about an individual child, family or other recipient of services for purposes other than those directly connected with the administration of child welfare laws or unless required or authorized by ORS 419A.255 or 419B.035. The records, files, papers and communications are confidential and are not available for public inspection. General information, policy statements, statistical reports or similar compilations of data are not confidential unless such information is identified with an individual child, family or other recipient of services or protected by other provision of law.

(2) Notwithstanding subsection (1) of this section, unless exempt from disclosure under ORS chapter 192, the department shall disclose child welfare records:

(a) About a recipient of services, to the recipient if the recipient is 18 years of age or older or is legally emancipated, unless prohibited by court order;

(b) Regarding a specific individual if the individual gives written authorization to release confidential information;

(c) Concerning a child receiving services on a voluntary basis, to the child's parent or legal guardian;

(d) To the juvenile court in proceedings regarding the child; and

(e) Concerning a child who is or has been in the custody of the department, to the child's parent or legal guardian except:

(A) When the child objects; or

(B) If disclosure would be contrary to the best interests of any child or could be harmful to the person caring for the child.

(3) Notwithstanding subsection (1) of this section, unless exempt from disclosure under ORS chapter 192, the department shall disclose child welfare records, if in the best interests of the child, to:

(a) Treatment providers, foster parents, adoptive parents, school officials or other persons providing services to the child or family to the extent that such disclosure is necessary to provide services to the child or family; or

(b) A person designated as a member of a sensitive review committee convened by the Director of Human Services when the purpose of the committee is to determine whether the department acted appropriately and to make recommendations to the department regarding policy and practice.

(4) Any record disclosed under subsection (1), (2) or (3) of this section shall be kept confidential by the person or entity to whom the record is disclosed and shall be used only for the purpose for which disclosure was made.

(5) Unless exempt from disclosure under ORS chapter 192, when an adult who is the subject of information made confidential by subsection (1) of this section publicly reveals or causes to be revealed any significant part of the confidential matter or information, the protections afforded by subsection (1) of this section are presumed voluntarily waived

## DAG - APPENDIX 2.a

and confidential information about the person making or causing the public disclosure, not already disclosed but related to the information made public, may be disclosed if disclosure is in the best interests of the child or necessary to the administration of the child welfare laws.

(6) Notwithstanding subsection (1) of this section, unless exempt from disclosure under ORS chapter 192, the department shall disclose information related to the department's activities and responsibilities in a case where child abuse or neglect has resulted in a child fatality or near fatality or where an adult has been charged with a crime related to child abuse or neglect.

(7) Notwithstanding subsections (2), (3), (5) and (6) of this section, ORS 192.501 (3) shall apply to investigatory information compiled for criminal law purposes that may be in the possession of the department.

(8) As used in this section, "adult" means a person who is 18 years of age or older.  
[1997 c.415 §1; 2001 c.900 §69]

**(2009 Edition)**

**419B.035 Confidentiality of records; when available to others.** (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and 192.610 to 192.990 relating to confidentiality and accessibility for public inspection of public records and public documents, reports and records compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and may not be disclosed except as provided in this section. The Department of Human Services shall make the records available to:

- (a) Any law enforcement agency or a child abuse registry in any other state for the purpose of subsequent investigation of child abuse;
- (b) Any physician, at the request of the physician, regarding any child brought to the physician or coming before the physician for examination, care or treatment;
- (c) Attorneys of record for the child or child's parent or guardian in any juvenile court proceeding;
- (d) Citizen review boards established by the Judicial Department for the purpose of periodically reviewing the status of children, youths and youth offenders under the jurisdiction of the juvenile court under ORS 419B.100 and 419C.005. Citizen review boards may make such records available to participants in case reviews;
- (e) A court appointed special advocate in any juvenile court proceeding in which it is alleged that a child has been subjected to child abuse or neglect;
- (f) The Child Care Division for certifying, registering or otherwise regulating child care facilities;
- (g) The Office of Children's Advocate;
- (h) The Teacher Standards and Practices Commission for investigations conducted under ORS 342.176 involving any child or any student in grade 12 or below;
- (i) Any person, upon request to the Department of Human Services, if the reports or records requested regard an incident in which a child, as the result of abuse, died or suffered serious physical injury as defined in ORS 161.015. Reports or records disclosed under this paragraph must be disclosed in accordance with ORS 192.410 to 192.505; and
- (j) The Child Care Division of the Employment Department for purposes of ORS 657A.030 (8)(g).

(2)(a) When disclosing reports and records pursuant to subsection (1)(i) of this section, the Department of Human Services may exempt from disclosure the names, addresses and other identifying information about other children, witnesses, victims or other persons named in the report or record if the department determines, in written findings, that the safety or well-being of a person named in the report or record may be jeopardized by disclosure of the names, addresses or other identifying information, and if that concern outweighs the public's interest in the disclosure of that information.

(b) If the Department of Human Services does not have a report or record of abuse regarding a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS 161.015, the department may disclose that information.

(3) The Department of Human Services may make reports and records compiled under the provisions of ORS 419B.010 to 419B.050 available to any person, administrative hearings officer, court, agency, organization or other entity when the department determines that such disclosure is necessary to administer its child welfare

DAG - APPENDIX 2.b

services and is in the best interests of the affected child, or that such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect children from abuse and neglect or for research when the Director of Human Services gives prior written approval. The Department of Human Services shall adopt rules setting forth the procedures by which it will make the disclosures authorized under this subsection or subsection (1) or (2) of this section. The name, address and other identifying information about the person who made the report may not be disclosed pursuant to this subsection and subsection (1) of this section.

(4) A law enforcement agency may make reports and records compiled under the provisions of ORS 419B.010 to 419B.050 available to other law enforcement agencies, district attorneys, city attorneys with criminal prosecutorial functions and the Attorney General when the law enforcement agency determines that disclosure is necessary for the investigation or enforcement of laws relating to child abuse and neglect.

(5) A law enforcement agency, upon completing an investigation and closing the file in a specific case relating to child abuse or neglect, shall make reports and records in the case available upon request to any law enforcement agency or community corrections agency in this state, to the Department of Corrections or to the State Board of Parole and Post-Prison Supervision for the purpose of managing and supervising offenders in custody or on probation, parole, post-prison supervision or other form of conditional or supervised release. A law enforcement agency may make reports and records compiled under the provisions of ORS 419B.010 to 419B.050 available to law enforcement, community corrections, corrections or parole agencies in an open case when the law enforcement agency determines that the disclosure will not interfere with an ongoing investigation in the case. The name, address and other identifying information about the person who made the report may not be disclosed under this subsection or subsection (6)(b) of this section.

(6)(a) Any record made available to a law enforcement agency or community corrections agency in this state, to the Department of Corrections or the State Board of Parole and Post-Prison Supervision or to a physician in this state, as authorized by subsections (1) to (5) of this section, shall be kept confidential by the agency, department, board or physician. Any record or report disclosed by the Department of Human Services to other persons or entities pursuant to subsections (1) and (3) of this section shall be kept confidential.

(b) Notwithstanding paragraph (a) of this subsection:

(A) A law enforcement agency, a community corrections agency, the Department of Corrections and the State Board of Parole and Post-Prison Supervision may disclose records made available to them under subsection (5) of this section to each other, to law enforcement, community corrections, corrections and parole agencies of other states and to authorized treatment providers for the purpose of managing and supervising offenders in custody or on probation, parole, post-prison supervision or other form of conditional or supervised release.

(B) A person may disclose records made available to the person under subsection (1)(i) of this section if the records are disclosed for the purpose of advancing the public interest.

(7) An officer or employee of the Department of Human Services or of a law enforcement agency or any person or entity to whom disclosure is made pursuant to

subsections (1) to (6) of this section may not release any information not authorized by subsections (1) to (6) of this section.

(8) As used in this section, “law enforcement agency” has the meaning given that term in ORS 181.010.

(9) A person who violates subsection (6)(a) or (7) of this section commits a Class A violation. [1993 c.546 §§20,20a; 1995 c.278 §51; 1997 c.328 §8; 1999 c.1051 §181; 2003 c.14 §224; 2003 c.412 §1; 2003 c.591 §8; 2005 c.317 §1; 2005 c.659 §2; 2009 c.348 §3; 2009 c.393 §1]

**430.399 When person must be taken to treatment facility; admission or referral; when jail custody may be used; confidentiality of records.** (1) Any person who is intoxicated or under the influence of controlled substances in a public place may be taken or sent home or to a treatment facility by the police. However, if the person is incapacitated, the health of the person appears to be in immediate danger, or the police have reasonable cause to believe the person is dangerous to self or to any other person, the person shall be taken by the police to an appropriate treatment facility. A person shall be deemed incapacitated when in the opinion of the police officer or director of the treatment facility the person is unable to make a rational decision as to acceptance of assistance.

(2) The director of the treatment facility shall determine whether a person shall be admitted as a patient, or referred to another treatment facility or denied referral or admission. If the person is incapacitated or the health of the person appears to be in immediate danger, or if the director has reasonable cause to believe the person is dangerous to self or to any other person, the person must be admitted. The person shall be discharged within 48 hours unless the person has applied for voluntary admission to the treatment facility.

(3) In the absence of any appropriate treatment facility, an intoxicated person or a person under the influence of controlled substances who would otherwise be taken by the police to a treatment facility may be taken to the city or county jail where the person may be held until no longer intoxicated, under the influence of controlled substances or incapacitated.

(4) An intoxicated person or person under the influence of controlled substances, when taken into custody by the police for a criminal offense, shall immediately be taken to the nearest appropriate treatment facility when the condition of the person requires emergency medical treatment.

(5) The records of a patient at a treatment facility shall not be revealed to any person other than the director and staff of the treatment facility without the consent of the patient. A patient's request that no disclosure be made of admission to a treatment facility shall be honored unless the patient is incapacitated or disclosure of admission is required by ORS 430.397.

(6) As used in this section, "treatment facility" has the meaning given "other treatment facility" in ORS 430.306. [Formerly 426.460]

**(2009 Edition)**

**179.505 Disclosure of written accounts by health care services provider.** (1) As used in this section:

(a) “Disclosure” means the release of, transfer of, provision of access to or divulgence in any other manner of information outside the health care services provider holding the information.

(b) “Health care services provider” means:

(A) Medical personnel or other staff employed by or under contract with a public provider to provide health care or maintain written accounts of health care provided to individuals; or

(B) Units, programs or services designated, operated or maintained by a public provider to provide health care or maintain written accounts of health care provided to individuals.

(c) “Individually identifiable health information” means any health information that is:

(A) Created or received by a health care services provider; and

(B) Identifiable to an individual, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual, and that relates to:

(i) The past, present or future physical or mental health or condition of an individual;

(ii) The provision of health care to an individual; or

(iii) The past, present or future payment for the provision of health care to an individual.

(d) “Personal representative” includes but is not limited to:

(A) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with authority to make medical and health care decisions;

(B) A person appointed as a health care representative under ORS 127.505 to 127.660 or a representative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment decisions; and

(C) A person appointed as a personal representative under ORS chapter 113.

(e) “Psychotherapy notes” means notes recorded in any medium:

(A) By a mental health professional, in the performance of the official duties of the mental health professional;

(B) Documenting or analyzing the contents of conversation during a counseling session; and

(C) That are maintained separately from the rest of the individual’s record.

(f) “Psychotherapy notes” does not mean notes documenting:

(A) Medication prescription and monitoring;

(B) Counseling session start and stop times;

(C) Modalities and frequencies of treatment furnished;

(D) Results of clinical tests; or

(E) Any summary of the following items:

(i) Diagnosis;

(ii) Functional status;

(iii) Treatment plan;

(iv) Symptoms;

(v) Prognosis; or

(vi) Progress to date.

(g) "Public provider" means:

(A) The Blue Mountain Recovery Center, the Eastern Oregon Training Center and the Oregon State Hospital campuses;

(B) Department of Corrections institutions as defined in ORS 421.005;

(C) A contractor of the Department of Corrections, the Department of Human Services or the Oregon Health Authority that provides health care to individuals residing in a state institution operated by the agencies;

(D) A community mental health program or community developmental disabilities program as described in ORS 430.610 to 430.695 and the public and private entities with which it contracts to provide mental health or developmental disabilities programs or services;

(E) A program or service provided under ORS 431.250, 431.375 to 431.385 or 431.416;

(F) A program or service established or maintained under ORS 430.630;

(G) A program or facility providing an organized full-day or part-day program of treatment that is licensed, approved, established, maintained or operated by or contracted with the Oregon Health Authority for alcoholism, drug addiction or mental or emotional disturbance;

(H) A program or service providing treatment by appointment that is licensed, approved, established, maintained or operated by or contracted with the authority for alcoholism, drug addiction or mental or emotional disturbance; or

(I) The impaired health professional program established under ORS 676.190.

(h) "Written account" means records containing only individually identifiable health information.

(2) Except as provided in subsections (3), (4), (6), (7), (8), (9), (11), (12), (14), (15), (16) and (17) of this section or unless otherwise permitted or required by state or federal law or by order of the court, written accounts of the individuals served by any health care services provider maintained in or by the health care services provider by the officers or employees thereof who are authorized to maintain written accounts within the official scope of their duties are not subject to access and may not be disclosed. This subsection applies to written accounts maintained in or by facilities of the Department of Corrections only to the extent that the written accounts concern the medical, dental or psychiatric treatment as patients of those under the jurisdiction of the Department of Corrections.

(3) If the individual or a personal representative of the individual provides an authorization, the content of any written account referred to in subsection (2) of this section must be disclosed accordingly, if the authorization is in writing and is signed and dated by the individual or the personal representative of the individual and sets forth with specificity the following:

(a) Name of the health care services provider authorized to make the disclosure, except when the authorization is provided by recipients of or applicants for public assistance to a governmental entity for purposes of determining eligibility for benefits or investigating for fraud;

- (b) Name or title of the persons or organizations to which the information is to be disclosed or that information may be disclosed to the public;
  - (c) Name of the individual;
  - (d) Extent or nature of the information to be disclosed; and
  - (e) Statement that the authorization is subject to revocation at any time except to the extent that action has been taken in reliance thereon, and a specification of the date, event or condition upon which it expires without express revocation. However, a revocation of an authorization is not valid with respect to inspection or records necessary to validate expenditures by or on behalf of governmental entities.
- (4) The content of any written account referred to in subsection (2) of this section may be disclosed without an authorization:
- (a) To any person to the extent necessary to meet a medical emergency.
  - (b) At the discretion of the responsible officer of the health care services provider, which in the case of any Oregon Health Authority facility or community mental health program is the Director of the Oregon Health Authority, to persons engaged in scientific research, program evaluation, peer review and fiscal audits. However, individual identities may not be disclosed to such persons, except when the disclosure is essential to the research, evaluation, review or audit and is consistent with state and federal law.
  - (c) To governmental agencies when necessary to secure compensation for services rendered in the treatment of the individual.
- (5) When an individual's identity is disclosed under subsection (4) of this section, a health care services provider shall prepare, and include in the permanent records of the health care services provider, a written statement indicating the reasons for the disclosure, the written accounts disclosed and the recipients of the disclosure.
- (6) The content of any written account referred to in subsection (2) of this section and held by a health care services provider currently engaged in the treatment of an individual may be disclosed to officers or employees of that provider, its agents or cooperating health care services providers who are currently acting within the official scope of their duties to evaluate treatment programs, to diagnose or treat or to assist in diagnosing or treating an individual when the written account is to be used in the course of diagnosing or treating the individual. Nothing in this subsection prevents the transfer of written accounts referred to in subsection (2) of this section among health care services providers, the Department of Human Services, the Department of Corrections, the Oregon Health Authority or a local correctional facility when the transfer is necessary or beneficial to the treatment of an individual.
- (7) When an action, suit, claim, arbitration or proceeding is brought under ORS 34.105 to 34.240 or 34.310 to 34.730 and involves a claim of constitutionally inadequate medical care, diagnosis or treatment, or is brought under ORS 30.260 to 30.300 and involves the Department of Corrections or an institution operated by the department, nothing in this section prohibits the disclosure of any written account referred to in subsection (2) of this section to the Department of Justice, Oregon Department of Administrative Services, or their agents, upon request, or the subsequent disclosure to a court, administrative hearings officer, arbitrator or other administrative decision maker.
- (8)(a) When an action, suit, claim, arbitration or proceeding involves the Department of Human Services, the Oregon Health Authority or an institution operated by the department or authority, nothing in this section prohibits the disclosure of any written

account referred to in subsection (2) of this section to the Department of Justice, Oregon Department of Administrative Services, or their agents.

(b) Disclosure of information in an action, suit, claim, nonlabor arbitration or proceeding is limited by the relevancy restrictions of ORS 40.010 to 40.585, 183.710 to 183.725, 183.745 and 183.750 and ORS chapter 183. Only written accounts of a plaintiff, claimant or petitioner shall be disclosed under this paragraph.

(c) Disclosure of information as part of a labor arbitration or proceeding to support a personnel action taken against staff is limited to written accounts directly relating to alleged action or inaction by staff for which the personnel action was imposed.

(9)(a) The copy of any written account referred to in subsection (2) of this section, upon written request of the individual or a personal representative of the individual, shall be disclosed to the individual or the personal representative of the individual within a reasonable time not to exceed five working days. The individual or the personal representative of the individual shall have the right to timely access to any written accounts.

(b) If the disclosure of psychiatric or psychological information contained in the written account would constitute an immediate and grave detriment to the treatment of the individual, disclosure may be denied, if medically contraindicated by the treating physician or a licensed health care professional in the written account of the individual.

(c) The Department of Corrections may withhold psychiatric or psychological information if:

(A) The information relates to an individual other than the individual seeking it.

(B) Disclosure of the information would constitute a danger to another individual.

(C) Disclosure of the information would compromise the privacy of a confidential source.

(d) However, a written statement of the denial under paragraph (c) of this subsection and the reasons therefor must be entered in the written account.

(10) A health care services provider may require a person requesting disclosure of the contents of a written account under this section to reimburse the provider for the reasonable costs incurred in searching files, abstracting if requested and copying if requested. However, an individual or a personal representative of the individual may not be denied access to written accounts concerning the individual because of inability to pay.

(11) A written account referred to in subsection (2) of this section may not be used to initiate or substantiate any criminal, civil, administrative, legislative or other proceedings conducted by federal, state or local authorities against the individual or to conduct any investigations of the individual. If the individual, as a party to an action, suit or other judicial proceeding, voluntarily produces evidence regarding an issue to which a written account referred to in subsection (2) of this section would be relevant, the contents of that written account may be disclosed for use in the proceeding.

(12) Information obtained in the course of diagnosis, evaluation or treatment of an individual that, in the professional judgment of the health care services provider, indicates a clear and immediate danger to others or to society may be reported to the appropriate authority. A decision not to disclose information under this subsection does not subject the provider to any civil liability. Nothing in this subsection may be construed

to alter the provisions of ORS 146.750, 146.760, 419B.010, 419B.015, 419B.020, 419B.025, 419B.030, 419B.035, 419B.040 and 419B.045.

(13) The prohibitions of this section apply to written accounts concerning any individual who has been treated by any health care services provider irrespective of whether or when the individual ceases to receive treatment.

(14) Persons other than the individual or the personal representative of the individual who are granted access under this section to the contents of a written account referred to in subsection (2) of this section may not disclose the contents of the written account to any other person except in accordance with the provisions of this section.

(15) Nothing in this section prevents the Department of Human Services or the Oregon Health Authority from disclosing the contents of written accounts in its possession to individuals or agencies with whom children in its custody are placed.

(16) The system described in ORS 192.517 (1) shall have access to records, as defined in ORS 192.515, as provided in ORS 192.517.

(17)(a) Except as provided in paragraph (b) of this subsection, a health care services provider must obtain an authorization from an individual or a personal representative of the individual to disclose psychotherapy notes.

(b) A health care services provider may use or disclose psychotherapy notes without obtaining an authorization from the individual or a personal representative of the individual to carry out the following treatment, payment and health care operations:

(A) Use by the originator of the psychotherapy notes for treatment;

(B) Disclosure by the health care services provider for its own training program in which students, trainees or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family or individual counseling; or

(C) Disclosure by the health care services provider to defend itself in a legal action or other proceeding brought by the individual or a personal representative of the individual.

(c) An authorization for the disclosure of psychotherapy notes may not be combined with an authorization for a disclosure of any other individually identifiable health information, but may be combined with another authorization for a disclosure of psychotherapy notes. [1973 c.736 §2; 1977 c.812 §3; 1981 c.326 §2; 1985 c.219 §1; 1987 c.320 §134; 1987 c.322 §1; 1989 c.81 §1; 1991 c.175 §1; 1991 c.807 §1; 1993 c.262 §3; 1993 c.546 §101; 2001 c.900 §44; 2003 c.88 §2; 2005 c.498 §5; 2009 c.595 §145; 2009 c.697 §12]

**419B.881 Disclosure; scope; when required; exceptions; breach of duty to**

**disclose.**(1) In all proceedings brought under ORS 419B.100 or 419B.500, each party, including the state, shall disclose to each other party and to a guardian ad litem appointed under ORS 419B.231 the following information and material within the possession or under the control of the party:

(a) The names and addresses of all persons the party intends to call as witnesses at any stage of the hearing, together with any relevant written or recorded statements or memoranda of any oral statements of such persons;

(b) Any written or recorded statements or memoranda of any oral statements made either by the parent or by the child to any other party or agent for any other party;

(c) Any reports or statements of experts who will be called as witnesses, including the results of any physical or mental examinations and of comparisons or experiments that the party intends to offer in evidence at the hearing; and

(d) Any books, papers, documents or photographs that the party intends to offer in evidence at the hearing, or that were obtained from or belong to any other party.

(2)(a) Disclosure shall be made as soon as practicable following the filing of a petition and no later than:

(A) Thirty days after a petition alleging jurisdiction has been filed.

(B) Three days before any review hearing, except for information received or discovered less than three days prior to the hearing.

(C) Ten days before a termination trial, except for information received or discovered less than 10 days prior to the trial.

(b) The court may supervise the exercise of discovery to the extent necessary to insure that it proceeds properly and expeditiously.

(3) The obligation to disclose is an ongoing obligation and if a party finds, either before or during the hearing, additional material or information that is subject to disclosure, the information or material shall be promptly disclosed.

(4) The following material and information need not be disclosed:

(a) Attorney work product; and

(b) Transcripts, recordings or memoranda of testimony of witnesses before the grand jury, except transcripts or recordings of testimony of a party to the current juvenile court proceeding.

(5) Upon a showing of good cause, the court may at any time order that specified disclosure be denied, restricted or deferred or make such other order as is appropriate.

(6) Upon request of a party, the court may permit a showing of good cause for denial or regulation of disclosure by the parties or the contents of subpoenaed materials, or portion of the showing, to be made in camera. A record shall be made of the proceeding.

(7) If the court enters an order following an in camera showing, the entire record of the showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal. The trial court may, after disposition, unseal the record.

(8) When some parts of certain material are subject to disclosure and other parts are not, as much of the material as is subject to disclosure shall be disclosed.

(9) Upon being notified of any breach of a duty to disclose material or information, the court may:

- (a) Order the violating party to permit inspection of the material;
- (b) Grant a continuance;
- (c) Refuse to permit the witness to testify;
- (d) Refuse to receive in evidence the material that was not disclosed; or
- (e) Enter such other order as the court considers appropriate. [Formerly 419B.300; 2005 c.450 §9]

**418.642 Confidentiality of information about person who maintains foster home; exceptions; rules.** (1) Notwithstanding ORS 192.410 to 192.505, the name, address and other identifying information about a person who maintains a foster home are confidential and not accessible for public inspection.

(2) Notwithstanding subsection (1) of this section, the Department of Human Services may adopt rules that allow the department to disclose information about a person who maintains a foster home if the department deems:

- (a) It necessary or advisable to protect the best interests of a child; or
- (b) It necessary for the administration of the child welfare laws. [1999 c.465 §2]

**419A.257 Disclosure to district attorney and other state and county entities.** (1) The district attorney or assistant attorney general representing the state in a juvenile court proceeding, the juvenile department, the Department of Human Services and the Oregon Youth Authority may inspect and obtain from the court copies of the records, reports and other materials described in ORS 419A.255 (1) and (2) to the same extent that attorneys for the other parties and the other parties are authorized to inspect and obtain copies of the records, reports and other materials. An agency or person that inspects or obtains records, reports or materials under this subsection is subject to ORS 419A.255 (3).

(2) Nothing in ORS 419A.255 prohibits the district attorney or assistant attorney general representing the state in a juvenile court proceeding, the juvenile department, the Department of Human Services, the Oregon Youth Authority or the other parties in the proceeding or their attorneys from disclosing to each other records, reports and other materials described in ORS 419A.255 (1) and (2) if the disclosure is reasonably necessary to perform official duties related to the involvement of the child, ward, youth or youth offender with the juvenile court or juvenile department. An agency or person to whom records, reports or materials are disclosed under this subsection is subject to ORS 419A.255 (3).

(3) An agency or person that inspects or obtains records, reports or materials under subsection (1) of this section or to whom records, reports or materials are disclosed under subsection (2) of this section may not use or disclose the records, reports or materials except:

- (a) As provided in subsections (1) and (2) of this section;
- (b) In the juvenile court proceeding for which the records, reports or materials were sought or disclosed;
- (c) With the consent of the court as provided in ORS 419A.255 (2) or (3); or
- (d) As provided in ORS 419A.253. [2005 c.451 §4]

**419B.100 Jurisdiction; bases; Indian children.** (1) Except as otherwise provided in subsection (6) of this section and ORS 107.726, the juvenile court has exclusive original jurisdiction in any case involving a person who is under 18 years of age and:

- (a) Who is beyond the control of the person’s parents, guardian or other person having custody of the person;
- (b) Whose behavior is such as to endanger the welfare of the person or of others;
- (c) Whose condition or circumstances are such as to endanger the welfare of the person or of others;
- (d) Who is dependent for care and support on a public or private child-caring agency that needs the services of the court in planning for the best interest of the person;
- (e) Whose parents or any other person or persons having custody of the person have:
  - (A) Abandoned the person;
  - (B) Failed to provide the person with the care or education required by law;
  - (C) Subjected the person to cruelty, depravity or unexplained physical injury; or
  - (D) Failed to provide the person with the care, guidance and protection necessary for the physical, mental or emotional well-being of the person;
- (f) Who has run away from the home of the person;
- (g) Who has filed a petition for emancipation pursuant to ORS 419B.550 to 419B.558; or
- (h) Who is subject to an order entered under ORS 419C.411 (7)(a).

(2) The court shall have jurisdiction under subsection (1) of this section even though the child is receiving adequate care from the person having physical custody of the child.

(3) The practice of a parent who chooses for the parent or the child of the parent treatment by prayer or spiritual means alone may not be construed as a failure to provide physical care within the meaning of this chapter, but does not prevent a court of competent jurisdiction from exercising that jurisdiction under subsection (1)(c) of this section.

(4) The provisions of subsection (1) of this section do not prevent a court of competent jurisdiction from entertaining a civil action or suit involving a child.

(5) The court does not have further jurisdiction as provided in subsection (1) of this section after a minor has been emancipated pursuant to ORS 419B.550 to 419B.558.

(6)(a) An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except where the jurisdiction is otherwise vested in the state by existing federal law.

(b) Upon the petition of either parent, the Indian custodian or the Indian child’s tribe, the juvenile court, absent good cause to the contrary and absent objection by either parent, shall transfer a proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child’s tribe, to the jurisdiction of the tribe.

(c) The juvenile court shall give full faith and credit to the public acts, records and judicial proceedings of an Indian tribe applicable to an Indian child custody proceeding to the same extent that the juvenile court gives full faith and credit to the public acts, records and judicial proceedings of any other entity. [1993 c.33 §53; 1993 c.546 §10; 1993 c.643 §5; 2005 c.843 §31]

**419B.500 Termination of parental rights generally.** The parental rights of the parents of a ward may be terminated as provided in this section and ORS 419B.502 to 419B.524, only upon a petition filed by the state or the ward for the purpose of freeing the ward for adoption if the court finds it is in the best interest of the ward. If an Indian child is involved, the termination of parental rights must be in compliance with the Indian Child Welfare Act. The rights of one parent may be terminated without affecting the rights of the other parent. [1993 c.33 §138; 1993 c.546 §56; 1997 c.873 §6; 2003 c.396 §83]

**411.320 Disclosure and use of public assistance records limited; contents as privileged communication; exceptions.** (1) For the protection of applicants for and recipients of public assistance, except as otherwise provided in this section, the Department of Human Services shall not disclose or use the contents of any public assistance records, files, papers or communications for purposes other than those directly connected with the administration of the public assistance laws of Oregon or as necessary to assist public assistance applicants and recipients in accessing and receiving other governmental or private nonprofit services, and these records, files, papers and communications are considered confidential subject to the rules and regulations of the Department of Human Services. In any judicial or administrative proceeding, except proceedings directly connected with the administration of public assistance or child support enforcement laws, their contents are considered privileged communications.

(2) Nothing in this section prohibits the disclosure or use of contents of records, files, papers or communications for purposes directly connected with the establishment and enforcement of support obligations pursuant to the Title IV-D program.

(3) Nothing in this section prohibits the disclosure of the address, Social Security number and photograph of any applicant or recipient to a law enforcement official at the request of such official. To receive information pursuant to this section, the officer must furnish the agency the name of the applicant or recipient and advise that the applicant or recipient:

- (a) Is fleeing to avoid prosecution, custody or confinement after conviction for a felony;
- (b) Is violating a condition of probation or parole; or
- (c) Has information that is necessary for the officer to conduct the official duties of the officer and the location or apprehension of the applicant or recipient is within such official duties. [1953 c.500 §5; 1971 c.779 §17; 1995 c.609 §8; 1997 c.581 §7; 2001 c.900 §88a]

**419A.255 Maintenance; disclosure; providing transcript; exceptions to confidentiality.** (1) The clerk of the court shall keep a record of each case, including therein the summons and other process, the petition and all other papers in the nature of pleadings, motions, orders of the court and other papers filed with the court, but excluding reports and other material relating to the child, ward, youth or youth offender's history and prognosis. The record of the case shall be withheld from public inspection but is open to inspection by the child, ward, youth, youth offender, parent, guardian, court appointed special advocate, surrogate or a person allowed to intervene in a proceeding involving the child, ward, youth or youth offender, and their attorneys. The attorneys are entitled to copies of the record of the case.

(2) Reports and other material relating to the child, ward, youth or youth offender's history and prognosis are privileged and, except at the request of the child, ward, youth or youth offender, may not be disclosed directly or indirectly to anyone other than the judge of the juvenile court, those acting under the judge's direction, service providers in the case and the attorneys of record for the child, ward, youth or youth offender or the child, ward, youth or youth offender's parent, guardian, court appointed special advocate, surrogate or person allowed to intervene in a proceeding involving the child, ward, youth or youth offender. Reports and other material relating to a youth offender's history and prognosis in cases under ORS 419C.005 may be disclosed to the superintendent of the school district in which the youth offender resides or the superintendent's designee. The service providers in the case, school superintendents, superintendents' designees and attorneys are entitled to examine and obtain copies of any reports or other material relating to the child, ward, youth or youth offender's history and prognosis. Any service provider in the case, school superintendent, superintendent's designee or attorney who examines or obtains copies of such reports or materials is responsible for preserving their confidentiality. A service provider, school superintendent or superintendent's designee who obtains copies of such reports or materials shall return the copies to the court upon the conclusion of the service provider's, superintendent's or superintendent's designee's involvement in the case.

(3) Except as otherwise provided in subsection (7) of this section, no information appearing in the record of the case or in reports or other material relating to the child, ward, youth or youth offender's history or prognosis may be disclosed to any person not described in subsection (2) of this section without the consent of the court, except for purposes of evaluating the child, ward, youth or youth offender's eligibility for special education as provided in ORS chapter 343, and no such information may be used in evidence in any proceeding to establish criminal or civil liability against the child, ward, youth or youth offender, whether such proceeding occurs after the child, ward, youth or youth offender has reached 18 years of age or otherwise, except for the following purposes:

(a) In connection with a presentence investigation after guilt has been admitted or established in a criminal court.

(b) In connection with a proceeding in another juvenile court concerning the child, ward, youth or youth offender or an appeal from the juvenile court.

(4) If the court finds that the child, ward, youth, youth offender or parent is without financial means to purchase all or a necessary part of the transcript of the evidence or

proceedings, the court shall order upon motion the transcript or part thereof to be furnished. The transcript or part thereof furnished under this subsection shall be paid for in the same manner as furnished transcripts are paid for in criminal cases.

(5) Notwithstanding any other provision of law, the following are not confidential and not exempt from disclosure:

- (a) The name and date of birth of the youth or youth offender;
  - (b) The basis for the juvenile court's jurisdiction over the youth or youth offender;
  - (c) The date, time and place of any juvenile court proceeding in which the youth or youth offender is involved;
  - (d) The act alleged in the petition that if committed by an adult would constitute a crime if jurisdiction is based on ORS 419C.005;
  - (e) That portion of the juvenile court order providing for the legal disposition of the youth or youth offender when jurisdiction is based on ORS 419C.005;
  - (f) The names and addresses of the youth or youth offender's parents or guardians;
- and
- (g) The register described in ORS 7.020 when jurisdiction is based on ORS 419C.005.

(6) Notwithstanding any other provision of law, when a youth has been taken into custody under ORS 419C.080, the following information shall be disclosed unless, and only for so long as, there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim:

- (a) The youth's name and age and whether the youth is employed or in school;
- (b) The youth offense for which the youth was taken into custody;
- (c) The name and age of the adult complaining party and the adult victim, unless the disclosure of such information is otherwise prohibited or restricted;
- (d) The identity of the investigating and arresting agency; and
- (e) The time and place that the youth was taken into custody and whether there was resistance, pursuit or a weapon used in taking the youth into custody.

(7)(a) Information contained in reports and other materials relating to a child, ward, youth or youth offender's history and prognosis that, in the professional judgment of the juvenile counselor, caseworker, school superintendent or superintendent's designee, teacher or detention worker to whom the information for the reports or other materials has been provided, indicates a clear and immediate danger to another person or to society shall be disclosed to the appropriate authority and the person or entity who is in danger from the child, ward, youth or youth offender.

(b) An agency or a person who discloses information under paragraph (a) of this subsection has immunity from any liability, civil or criminal, that might otherwise be incurred or imposed for making the disclosure.

(c) Nothing in this subsection affects the provisions of ORS 146.750, 146.760, 419B.035, 419B.040 and 419B.045. The disclosure of information under this section does not make the information admissible in any court or administrative proceeding if it is not otherwise admissible.

(8) A county juvenile department is the agency responsible for disclosing youth and youth offender records if the records are subject to disclosure.

(9) A petition filed under ORS 419B.851 alleging that a child who is a foreign national is within the jurisdiction of the court, or a motion requesting an implementation

plan other than return of a ward to the ward's parent, is subject to disclosure to the consulate for the child or ward's country as provided under ORS 419B.851 (3).

(10) Nothing in this section prohibits a guardian appointed under ORS 419B.365 or 419B.366 from disclosing or providing copies of letters of guardianship when so required to fulfill the duties of a guardian.

(11) The court shall cooperate in the sharing of information with a court in another state to facilitate an interstate placement of a child or ward. [1993 c.33 §49; 1993 c.234 §3; 1993 c.546 §8; 1995 c.422 §68; 1997 c.724 §§3,4; 1999 c.59 §118; 1999 c.620 §8; 2001 c.904 §11; 2001 c.910 §1; 2003 c.143 §4; 2003 c.229 §9; 2003 c.396 §34a; 2007 c.611 §4; 2008 c.50 §9]

## DAG – Appendix 2.1

### **419A.102 Access to confidential information by boards; procedure. (1)**

Notwithstanding the provisions of ORS 40.225 to 40.275, 412.074, 419B.035, 419B.045, 419B.440, 419B.443, 419B.446, 419B.449, 419B.452 and 419B.460, each local citizen review board shall have access to:

(a) Any records of the court which are pertinent to the case; and

(b) Any records of the Department of Human Services that would be admissible in a permanency hearing conducted under ORS 419B.470, 419B.473 and 419B.476, including school records and reports of private service providers contained in the records of the department or other agency.

(2) All requested records not already before the local citizen review board shall be submitted by the department within five working days after receipt of the request. The following provisions apply:

(a) Copies may be sent in lieu of originals.

(b) Except as otherwise provided in this paragraph, the local citizen review boards and the staff provided for the boards must return all records and copies received from the department to the department within seven working days after completion of the review. The staff of a local citizen review board may retain a reference copy of case materials used by the local citizen review board to make its recommendation if the following apply:

(A) The material is necessary for the ongoing work of the board with regard to the particular case or to work of the board; and

(B) The confidentiality of the material is continued and protected in the same manner as other materials received from the department. Materials thus retained by the local boards are exempt from disclosure under the public records law.

(3) If a local citizen review board is denied access to requested records, it may request a court hearing. The court may require the organization in possession of the records to show cause why the records should not be made available as provided by this section. [1993 c.33 §28; 1993 c.546 §91; 1999 c.859 §17]

## DAG – Appendix 2.m

### COURT APPOINTED SPECIAL ADVOCATES

#### **419A.170 Appointment; duties; immunity; access to information; CASA Fund; rules.**

(1) In every case under ORS chapter 419B, the court shall appoint a court appointed special advocate. The court appointed special advocate is deemed a party in these proceedings, and in the furtherance thereof, may be represented by counsel, file pleadings and request hearings and may subpoena, examine and cross-examine witnesses. If the court appointed special advocate is represented by counsel, counsel shall be paid from funds available to the Court Appointed Special Advocate Volunteer Program. No funds from the Public Defense Services Account or Judicial Department operating funds may be used for this purpose.

(2) Subject to the direction of the court, the duties of the court appointed special advocate are to:

(a) Investigate all relevant information about the case;

(b) Advocate for the child or ward, ensuring that all relevant facts are brought before the court;

(c) Facilitate and negotiate to ensure that the court, Department of Human Services, if applicable, and the child or ward's attorney, if any, fulfill their obligations to the child or ward in a timely fashion; and

(d) Monitor all court orders to ensure compliance and to bring to the court's attention any change in circumstances that may require a modification of the court's order.

(3) If a juvenile court does not have available to it a CASA Volunteer Program, or a sufficient number of qualified CASA volunteers, the court may, in fulfillment of the requirements of this section, appoint a juvenile department employee or other suitable person to represent the child or ward's interest in court pursuant to ORS 419A.012 or 419B.195.

(4) Any person appointed as a court appointed special advocate in any judicial proceeding on behalf of the child or ward is immune from any liability for defamation or statements made in good faith by that person, orally or in writing, in the course of the case review or judicial proceeding.

(5) Any person appointed as a court appointed special advocate, CASA Volunteer Program director, CASA Volunteer Program employee or member of the board of directors or trustees of any CASA Volunteer Program is immune from any liability for acts or omissions or errors in judgment made in good faith in the course or scope of that person's duties or employment as part of a CASA Volunteer Program.

(6) Whenever the court appoints a court appointed special advocate or other person under subsections (1) to (3) of this section to represent the child or ward, it may require a parent, if able, or guardian of the estate, if the estate is able, to pay, in whole or in part, the reasonable costs of CASA services including reasonable attorney fees. The court's order of payment is enforceable in the same manner as an order of support under ORS 419B.408.

(7) Upon presentation of the order of appointment by the court appointed special advocate, any agency, hospital, school organization, division, office or department of the state, doctor, nurse or other health care provider, psychologist, psychiatrist, police department or mental health clinic shall permit the court appointed special advocate to

## DAG – Appendix 2.m

inspect and copy any records relating to the child or ward involved in the case, without the consent of the child, ward or parents.

(8) All records and information acquired or reviewed by a court appointed special advocate during the course of official duties are deemed confidential under ORS 419A.255.

(9) For the purposes of a Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq.) grant to this state under Public Law No. 93-247, or any related state or federal legislation, a court appointed special advocate or other person appointed pursuant to subsections (1) to (3) of this section is deemed a guardian ad litem to represent the interests of the child or ward in proceedings before the court. Any provisions of this section and ORS 419B.035 and 419B.045 that cause this state to lose federal funding are null and void.

(10) There is created a Court Appointed Special Advocate (CASA) Fund in the General Fund. The fund consists of all moneys credited to it. Moneys in the Court Appointed Special Advocate Fund are continuously appropriated to the State Commission on Children and Families and may be used only to carry out the purposes of this section. The commission may apply for and receive funds from federal and private sources for carrying out the provisions of this section.

(11) The state commission may expend moneys from the Court Appointed Special Advocate Fund directly or indirectly through contracts or grants for the creation, supervision and operation of CASA Volunteer Programs statewide in accordance with the provisions of ORS 419A.045 to 419A.048. The commission may also expend moneys from the Court Appointed Special Advocate Fund to pay the reasonable costs of its administration of the Court Appointed Special Advocate Fund. The commission shall adopt rules for carrying out its responsibilities under this section and ORS 419B.035 and 419B.045. [1993 c.33 §44; 1993 c.546 §92; 1993 c.676 §41; 1997 c.130 §12; 2001 c.962 §91; 2003 c.396 §§25,26; 2005 c.755 §35]

## DAG – Appendix 2.n

**419B.875 Parties to proceedings; rights of limited participation; status of grandparents; interpreters.** (1)(a) Parties to proceedings in the juvenile court under ORS 419B.100 and 419B.500 are:

- (A) The child or ward;
- (B) The parents or guardian of the child or ward;
- (C) A putative father of the child or ward who has demonstrated a direct and significant commitment to the child or ward by assuming, or attempting to assume, responsibilities normally associated with parenthood, including but not limited to:
  - (i) Residing with the child or ward;
  - (ii) Contributing to the financial support of the child or ward; or
  - (iii) Establishing psychological ties with the child or ward;
- (D) The state;
- (E) The juvenile department;
- (F) A court appointed special advocate, if appointed;
- (G) The Department of Human Services or other child-caring agency if the agency has temporary custody of the child or ward; and
- (H) The tribe in cases subject to the Indian Child Welfare Act if the tribe has intervened pursuant to the Indian Child Welfare Act.

(b) An intervenor who is granted intervention under ORS 419B.116 is a party to a proceeding under ORS 419B.100. An intervenor under this paragraph is not a party to a proceeding under ORS 419B.500.

(2) The rights of the parties include, but are not limited to:

- (a) The right to notice of the proceeding and copies of the petitions, answers, motions and other papers;
- (b) The right to appear with counsel and, except for intervenors under subsection (1)(b) of this section, to have counsel appointed as otherwise provided by law;
- (c) The right to call witnesses, cross-examine witnesses and participate in hearings;
- (d) The right of appeal; and
- (e) The right to request a hearing.

(3) A putative father who satisfies the criteria set out in subsection (1)(a)(C) of this section shall be treated as a parent, as that term is used in this chapter and ORS chapters 419A and 419C, until the court confirms his paternity or finds that he is not the legal or biological father of the child or ward.

(4) If no appeal from the judgment or order is pending, a putative father whom a court of competent jurisdiction has found not to be the child or ward's legal or biological father or who has filed a petition for filiation that was dismissed is not a party under subsection (1) of this section.

(5)(a) A person granted rights of limited participation under ORS 419B.116 is not a party to a proceeding under ORS 419B.100 or 419B.500 but has only those rights specified in the order granting rights of limited participation.

(b) Persons moving for or granted rights of limited participation are not entitled to appointed counsel but may appear with retained counsel.

(6) If a foster parent, preadoptive parent or relative is currently providing care for a child or ward, the Department of Human Services shall give the foster parent, preadoptive parent or relative notice of a proceeding concerning the child or ward. A foster parent, preadoptive parent or relative providing care for a child or ward has the

## DAG – Appendix 2.n

right to be heard at the proceeding. Except when allowed to intervene, the foster parent, preadoptive parent or relative providing care for the child or ward is not considered a party to the juvenile court proceeding solely because of notice and the right to be heard at the proceeding.

(7) When a legal grandparent of a child or ward requests in writing and provides a mailing address, the Department of Human Services shall give the legal grandparent notice of a hearing concerning the child or ward and the court shall give the legal grandparent an opportunity to be heard. Except when allowed to intervene, a legal grandparent is not considered a party to the juvenile court proceeding solely because of notice and an opportunity to be heard.

(8) Interpreters for parties and persons granted rights of limited participation shall be appointed in the manner specified by ORS 45.275 and 45.285. [Formerly 419B.115; 2003 c.231 §§1,2; 2003 c.396 §§93a,94a; 2005 c.160 §4; 2005 c.450 §8; 2007 c.454 §11; 2007 c.611 §9]

## DAG – Appendix 2.o

**192.445 Nondisclosure on request of home address, home telephone number and electronic mail address; rules of procedure; duration of effect of request; liability; when not applicable.** (1) An individual may submit a written request to a public body not to disclose a specified public record indicating the home address, personal telephone number or electronic mail address of the individual. A public body may not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address, personal telephone number or electronic mail address remains available for public inspection.

(2) The Attorney General shall adopt rules describing:

(a) The procedures for submitting the written request described in subsection (1) of this section.

(b) The evidence an individual shall provide to the public body to establish that disclosure of the home address, telephone number or electronic mail address of the individual would constitute a danger to personal safety. The evidence may include but is not limited to evidence that the individual or a family member residing with the individual has:

(A) Been a victim of domestic violence;

(B) Obtained an order issued under ORS 133.055;

(C) Contacted a law enforcement officer involving domestic violence or other physical abuse;

(D) Obtained a temporary restraining order or other no contact order to protect the individual from future physical abuse; or

(E) Filed other criminal or civil legal proceedings regarding physical protection.

(c) The procedures for submitting the written notification from the individual that disclosure of the home address, personal telephone number or electronic mail address of the individual no longer constitutes a danger to personal safety.

(3) A request described in subsection (1) of this section remains effective:

(a) Until the public body receives a written request for termination but no later than five years after the date that a public body receives the request; or

(b) In the case of a voter registration record, until the individual must update the individual's voter registration, at which time the individual may apply for another exemption from disclosure.

(4) A public body may disclose a home address, personal telephone number or electronic mail address of an individual exempt from disclosure under subsection (1) of this section upon court order, on request from any law enforcement agency or with the consent of the individual.

(5) A public body may not be held liable for granting or denying an exemption from disclosure under this section or any other unauthorized release of a home address, personal telephone number or electronic mail address granted an exemption from disclosure under this section.

(6) This section does not apply to county property and lien records. [1993 c.787 §5; 1995 c.742 §12; 2003 c.807 §1]

## DAG - Appendix 2.p

### **411.117 Requirements when applicants or recipients victims of domestic violence; identification.** (1) The Department of Human Services shall:

(a) Identify applicants for and recipients of assistance under the temporary assistance to needy families program who are currently victims of domestic violence, have been victims of domestic violence or are at risk of victimization by domestic violence.

(b) Ensure that appropriate individuals on the local level who provide assistance to domestic violence victims participate in individualized case management with the department.

(c) Refer individuals identified under this subsection to appropriate counseling and support services.

(d) Waive or modify any temporary assistance to needy families program requirements that may make it more difficult for individuals identified under this subsection to escape domestic violence or place those individuals at risk of further or future domestic violence, including but not limited to:

(A) Time limits on receipt of benefits;

(B) Work requirements;

(C) Paternity establishment and child support cooperation requirements;

(D) Residency requirements;

(E) Family cap provisions; and

(F) Penalties for failure to comply with a program requirement.

(e) Maintain emergency assistance eligibility and payment limits for victims of domestic violence or persons at risk of victimization by domestic violence identified under this section at no less than the levels in effect on January 1, 1997.

(f) Allow eligibility for temporary assistance to needy families for persons identified under this section as victims of domestic violence or persons identified as at risk of victimization by domestic violence who would otherwise be eligible except for the fact that they are noncitizens.

(2) All information received by the department in identifying the individuals described in subsection (1) of this section shall remain confidential.

(3) For purposes of this section, "domestic violence" means the occurrence of one or more of the following acts between family members, intimate partners or household members:

(a) Attempting to cause or intentionally, knowingly or recklessly causing physical injury or emotional, mental or verbal abuse;

(b) Intentionally, knowingly or recklessly placing another in fear of imminent serious physical injury;

(c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427; or

(d) Using coercive or controlling behavior. [1997 c.330 §2]

## **DAG - Appendix 2.q**

### **DEPARTMENT OF HUMAN SERVICES, ADMINISTRATIVE SERVICES DIVISION AND DIRECTOR'S OFFICE**

#### **DIVISION 14**

#### **PRIVACY AND CONFIDENTIALITY**

#### **Privacy of Protected Information**

#### **OAR 407-014-0020**

#### **Uses and Disclosures of Client or Participant Protected Information**

(1) Uses and disclosures with individual authorization. The Department must obtain a completed and signed authorization for release of information from the individual, or the individual's personal representative, before obtaining or using protected information about an individual from a third party or disclosing protected information about the individual to a third party.

(a) Uses and disclosures must be consistent with what the individual has approved on the signed authorization form approved by the Department.

(b) An individual may revoke an authorization at any time. The revocation must be in writing and signed by the individual, except that substance abuse treatment patients may orally revoke an authorization to disclose information obtained from substance abuse treatment programs. No revocation shall apply to information already released while the authorization was valid and in effect.

(2) Uses and disclosures without authorization. The Department may use and disclose information without written authorization in the following circumstances:

(a) The Department may disclose information to individuals who have requested disclosure to themselves of their information, if the individual has the right to access the information under OAR 407-014-0030(6).

(b) If the law requires or permits the disclosure, and the use and disclosure complies with, and is limited to, the relevant requirements of the relevant law.

(c) For treatment, payment, and health care operations the Department may disclose the following information:

(A) Activities involving the current treatment of an individual, for the Department or health care provider;

(B) Payment activities, for the Department, covered entity, or health care provider;

## DAG - Appendix 2.q

(C) Protected health information for the purpose of health care operations; and

(D) Substance abuse treatment information, if the recipient has a Qualified Service Organization Agreement with the Department.

(d) Psychotherapy notes. The Department may only use and disclose psychotherapy notes in the following circumstances:

(A) In the Department's supervised counseling training programs;

(B) In connection with oversight of the originator of the psychotherapy notes; or

(C) To defend the Department in a legal action or other proceeding brought by the individual.

(e) Public health activities.

(A) The Department may disclose an individual's protected information to appropriate entities or persons for governmental public health activities and for other purposes including but not limited to:

(i) A governmental public health authority that is authorized by law to collect or receive protected information for the purpose of preventing or controlling disease, injury, or disability. This includes but is not limited to reporting disease, injury, and vital events such as birth or death; and the conducting of public health surveillance, investigations, and interventions;

(ii) An official of a foreign government agency that is acting in collaboration with a governmental public health authority;

(iii) A governmental public health authority, or other government authority that is authorized by law to receive reports of child abuse or neglect;

(iv) A person subject to the jurisdiction of the federal Food and Drug Administration (FDA), regarding an FDA-regulated product or activity for which that person is responsible for activities related to the quality, safety, or effectiveness of an FDA-regulated product or activity; or

(v) A person who may have been exposed to a communicable disease, or may be at risk of contracting or spreading a disease or condition, if the Department or other public health authority is authorized to notify the person as necessary in conducting a public health intervention or investigation.

(B) Where state or federal law prohibits or restricts use and disclosure of information obtained or maintained for public health purposes, the Department shall deny the use and disclosure.

## **DAG - Appendix 2.q**

(f) Child abuse reporting and investigation. If the Department has reasonable cause to believe that a child is a victim of abuse or neglect, the Department may disclose protected information to appropriate governmental authorities authorized by law to receive reports of child abuse or neglect (including reporting to the Department protective services staff if appropriate). If the Department receives information as the child protective services agency, the Department may use and disclose the information consistent with its legal authority and in compliance with any applicable state and federal regulations.

(g) Adult abuse reporting and investigation. If the Department has reasonable cause to believe that a vulnerable adult is a victim of abuse or neglect, the Department may disclose information, as required by law, to a government authority or regulatory agency authorized by law to receive reports of abuse or neglect including but not limited to a social service or protective services agency (which may include the Department) authorized by law to receive such reports. Vulnerable adults are adults age 65 or older and persons with disabilities. If the Department receives information as the social services or protective services agency, the Department may use and disclose the information.

(h) Health oversight activities. The Department may disclose information without authorization for health oversight activities, including audits; civil, criminal, or administrative investigations, prosecutions, licensing or disciplinary actions; Medicaid fraud; or other necessary oversight activities.

(i) Administrative and court hearings, grievances, investigations, and appeals.

(A) The Department may use or disclose information for an investigation, administrative or court hearing, grievance, or appeal about an individual's eligibility or right to receive Department benefits or services.

(B) If the Department has obtained information in performing its duties as a health oversight agency, public health authority, protective service entity, or public benefit program, the Department may use or disclose that information in an administrative or court hearing consistent with the other privacy requirements applicable to that program, service, or activity.

(j) Court orders. The Department may disclose information for judicial or administrative proceedings in response to a court order, subpoena, discovery request, or other legal process. If a court orders the Department to conduct a mental examination pursuant to ORS 161.315, 161.365, 161.370, or 419B.352, or orders the Department to provide any other report or evaluation to the court, the examination, report, or evaluation shall be deemed to be required by law for purposes of HIPAA.

(k) Law enforcement purposes. For limited law enforcement purposes, the Department may report certain injuries or wounds; provide information to identify or locate a suspect, victim, or witness; alert law enforcement of a death as a result of criminal conduct; and

## **DAG - Appendix 2.q**

provide information which constitutes evidence of criminal conduct on Department premises.

(A) The Department may provide client information to a law enforcement officer in any of the following situations:

(i) The law enforcement officer is involved in carrying out any investigation, criminal, or civil proceedings connected with administering the program from which the information is sought;

(ii) A Department employee may disclose information from personal knowledge that does not come from the client's interaction with the Department;

(iii) The disclosure is authorized by statute or administrative rule;

(iv) The information informs law enforcement of a death as a result of criminal conduct;

(v) The information constitutes evidence of criminal conduct on Department premises; or

(vi) The disclosure is necessary to protect the client or others, and the client poses a threat to his or her safety or to the safety of others.

(B) Except as provided in section (2)(k)(C) of this rule, the Department may give a client's current address, Social Security number, and photo to a law enforcement officer if the law enforcement officer makes the request in the course of official duty, supplies the client's name, and states that the client:

(i) Is a fugitive felon or is violating parole, probation, or post-prison supervision;

(ii) For all public assistance programs, has information that is necessary for the officer to conduct official duties, and the location or apprehension of the client is within the officer's official duties; or

(iii) For clients only in the Food Stamp program, has information that is necessary to conduct an official investigation of a fugitive felon or person violating parole, probation, or post-prison supervision.

(C) If domestic violence has been identified in the household, the Department may not release information about a victim of domestic violence unless a member of the household is either wanted as a fugitive felon or is violating parole, probation, or post-prison supervision.

(D) For purposes of this subsection, a fugitive felon is a person fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony.

## DAG - Appendix 2.q

(E) For purposes of this section, a law enforcement officer is an employee of the Oregon State Police, a county sheriff's department, or a municipal police department, whose official duties include arrest authority.

(I) Use and disclosure of information about deceased individuals.

(A) The Department may disclose individual information to a coroner or medical examiner for the purpose of identifying a deceased individual, determining cause of death, or other duties authorized by law.

(B) The Department may disclose individual information to funeral directors as needed to carry out their duties regarding the decedent. The Department may also disclose individual information prior to, and in anticipation of, the death.

(m) Organ or tissue donation. The Department may disclose individual information to organ procurement organizations or other entities engaged in procuring, banking, or transplanting cadaver organs, eyes, or tissue for the purpose of facilitating transplantation.

(n) Research. The Department may disclose individual information without authorization for research purposes, as specified in OAR 407-014-0060.

(o) Threat to health or safety. To avert a serious threat to health or safety the Department may disclose individual information if:

(A) The Department believes in good faith that the information is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and

(B) The report is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

(p) National security and intelligence. The Department may disclose information to authorized federal officials for lawful intelligence, counterintelligence, and other national security activities.

(q) Correctional institutions and law enforcement custody situations. The Department may disclose information to a correctional institution or a law enforcement official having lawful custody of an inmate or other person, for the limited purpose of providing health care or ensuring the health or safety of the person or other inmates.

(r) Emergency treatment. In case of an emergency, the Department may disclose individual information to the extent needed to provide emergency treatment.

(s) Government entities providing public benefits. The Department may disclose eligibility and other information to governmental entities administering a government program providing public benefits.

## DAG - Appendix 2.q -

(3) Authorization not required if opportunity to object given. The Department may use and disclose an individual's information without authorization if the Department informs the individual in advance and gives the individual an opportunity to either agree or refuse or restrict the use and disclosure.

(a) These disclosures are limited to disclosure of information to a family member, other relative, close personal friend of the individual, or any other person named by the individual, subject to the following limitations:

(A) The Department may disclose only the protected information that directly relates to the person's involvement with the individual's care or payment for care.

(B) The Department may use and disclose protected information for notifying, identifying, or locating a family member, personal representative, or other person responsible for care of the individual, regarding the individual's location, general condition, or death. For individuals who had resided at one time at the state training center, OAR 411-320-0090(6) addresses family reconnection.

(C) If the individual is present for, or available prior to, a use and disclosure, the Department may disclose the protected information if the Department:

(i) Obtains the individual's agreement;

(ii) Provides the individual an opportunity to object to the disclosure, and the individual does not object; or

(iii) Reasonably infers from the circumstances that the individual does not object to the disclosure.

(D) If the individual is not present, or the opportunity to object to the use and disclosure cannot practicably be provided due to the individual's incapacity or an emergency situation, the Department may disclose the information if, using professional judgment, the Department determines that the use and disclosure is in the individual's best interests.

(b) Exception. For individuals referred to or receiving substance abuse treatment, mental health, or vocational rehabilitation services, the Department shall not use or disclose information without written authorization, unless disclosure is otherwise permitted under 42 CFR part 2 or ORS 179.505.

(c) Personal representative. The Department must treat a personal representative as the individual for purposes of these rules, except that:

(A) A personal representative must be authorized under state law to act on behalf of the individual with respect to use and disclosure of information. The Department may require a personal representative to provide a copy of the documentation authorizing the person to act on behalf of the individual.

## DAG - Appendix 2.q

(B) The Department may elect not to treat a person as a personal representative of an individual if:

- (i) The Department has a reasonable belief that the individual has been or may be subjected to domestic violence, abuse, or neglect by the person;
- (ii) The Department, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

(4) Redisclosure. The Department must inform the individual that information held by the Department and authorized by the individual for disclosure may be subject to redisclosure and no longer protected by these rules.

(5) Specific written authorization. If the use or disclosure of information requires an authorization, the authorization must specify that the Department may use or disclose vocational rehabilitation records, alcohol and drug records, HIV/AIDS records, genetics information, and mental health or developmental disability records held by publicly funded providers.

(a) Pursuant to federal regulations at 42 CFR part 2 and 34 CFR 361.38, the Department may not make further disclosure of vocational rehabilitation and alcohol and drug rehabilitation information without the specific written authorization of the individual to whom it pertains.

(b) Pursuant to ORS 433.045 and OAR 333-012-0270, the Department may not make further disclosure of individual information pertaining to HIV/AIDS.

(c) Pursuant to ORS 192.531 to 192.549, the Department may not make further disclosure pertaining to genetic information.

(6) Verification of person or entity requesting information. The Department may not disclose information about an individual without first verifying the identity of the person or entity requesting the information, unless the Department workforce member fulfilling the request already knows the person or has already verified identity.

(7) Whistleblowers. The Department may disclose an individual's protected health information under the HIPAA privacy rules under the following circumstances:

(a) The Department workforce member or business associate believes in good faith that the Department has engaged in conduct that is unlawful or that otherwise violates professional standards or Department policy, or that the care, services, or conditions provided by the Department could endanger Department staff, individuals in Department care, or the public; and

## **DAG - Appendix 2.q**

(b) The disclosure is to a government oversight agency or public health authority, or an attorney of a Department workforce member or business associate retained for the purpose of determining the legal options of the workforce member or business associate with regard to the conduct alleged under section (7)(a) above; and

(c) Nothing in this rule is intended to interfere with ORS 659A.200 to 659A.224 describing the circumstances applicable to disclosures by Department workforce or business associates.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010, 433.045

Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0020 by DHSD 5-2009, f. & cert. ef. 7-1-09

**FEDERAL AND STATE CONFIDENTIALITY AND DISCLOSURE STATUTES  
MOST COMMONLY APPLICABLE TO RECORDS FOUND IN  
DHS CHILD WELFARE FILES**

A. Introduction

Each record request must be reviewed to determine the nature of the record requested and the applicable federal and state confidentiality statutes that may apply to the record. This outline reflects the most common confidentiality and disclosure statutes applicable to the records frequently found in DHS child welfare files. Individual files may contain records that are governed by other statutes.

B. Federal and State Statutes and Rules

1. Child Abuse Reports and Records

a. **Federal Law** -- Child Abuse and Neglect Prevention and Treatment Act (CAPTA). 42 USC § 5101 – 5116(i).

- Requires States preserve the confidentiality of all records "in order to protect the rights of the child and the child's parents or guardians." 42 USC § 5106a(b)(2)(A)(viii).
- State must ensure that disclosure of information concerning child abuse or neglect of a specific person is made only to persons the State determines has a need to know the information directly related to the purposes of child abuse program. 42 USC § 5106a(b)(2)(A)(viii)(I-VI).
- Allows disclosure to government entity with need to know information to carry out duty to protect children. 42 USC §§ 5106a(b)(2)(A)(ix).
- Authorizes public disclosure of findings or information about a case of child abuse or neglect that resulted in a child fatality or near fatality. 42 USC §§ 5106a(b)(2)(A)(vii) & (x).

b. Federal Regulations implementing CAPTA. 45 CFR § 1340.14(i).

- Requires state have "statute that all records concerning reports and reports of child abuse and neglect are confidential and that their unauthorized disclosure is a criminal offense." 45 CFR § 1340.14(i)(1).
- List of persons or agencies that may be authorized to obtain records under state law. 45 CFR § 1340.14(i)(2)(i-xi).

c. **State Law** -- Child Abuse Reporting Statute -- ORS 419B.035.

- Excludes child abuse reports and records from application of the Public Records law. ORS 419B.035(1).
- Requires disclosure to certain persons including physicians for the child, law enforcement, attorneys for the child and parent in the juvenile court proceeding, citizen review board, court appointed special advocate, Child Care Division for purpose of certifying, registering or otherwise regulating child care facilities. 419B.035 (1)(a) – (e).
- Permits disclosures based on certain findings including: 1) disclosure is in the best interests of the affected child AND necessary for the department to administer its child welfare service; or 2) disclosure is necessary to investigate, prevent or treat child abuse/neglect or to protect children from child abuse/neglect. ORS 419B.035(3).
- Requires that all records disclosed by DHS must remain confidential in the hands of the recipient subject to criminal penalty for unauthorized redisclosure. ORS 419B.035(7) & (9).

## 2. DHS Child Welfare Records

- a. **State Law** -- Confidentiality and disclosure of DHS records -- ORS 409.225.
- DHS shall not disclose or use contents of any records, files, papers or communications concerning an individual child, family, or other recipient of DHS services for purposes other than those directly connected with the administration of child welfare laws or unless required or authorized by ORS 419A.255 or ORS 419B.035. ORS 409.225(1).
  - Unless public records law exemption applies, requires disclosure of certain records to certain persons in specified circumstances including the juvenile court and parents of children receiving services on a voluntary basis. ORS 409.225(2)(c).
  - Unless public records law exemption applies, requires disclosure, if in the best interests of the child, to certain persons in specified circumstances, including other DHS employees, treatment providers, foster or adoptive parents and school officials. ORS 409.225(3)(a) & (b).
  - Requires that all records disclosed must be kept confidential by the person to whom the records were disclosed and used only for the purpose for which disclosure was made. ORS 409.225(4)
  - Requires DHS disclose information related to its activities/responsibilities in cases where child abuse has resulted in a fatality, near fatality or an adult has been charged with crime related to child abuse or neglect. ORS 409.225(6).

3. Juvenile court records

- a. Juvenile court legal file -- ORS 419A.255(1) & (3).
  - Legal file (record of the case) contains summons, petition, motions, other pleadings and other papers filed with the court, excluding reports and other material related to the child's history and prognosis.
  - Not available for public inspection.
  - Open to inspection by child, parent, guardian, court appointed special advocate, surrogate or intervenor under ORS 109.119(1) and their attorneys.
  - Attorneys for listed persons may have copies of the record.
  - Juvenile court legal file may be disclosed with consent of juvenile court. ORS 419A.255(3).
- b. Juvenile court social file -- ORS 419A.255(2), (3) & (6).
  - Reports and other materials related to the child's history or prognosis are privileged and, except at the request of the child or youth, may not be disclosed to anyone except the judge of the juvenile court, those acting under the judge's direction and to attorneys of record for the child or the child's parent or guardian, CASA, surrogate or intervenor under ORS 109.119(1). ORS 419A.255(2).
  - Juvenile court social file may be disclosed with consent of juvenile court. ORS 419A.255(3).
  - May disclose history and prognosis information to evaluate eligibility for special education, for presentence reports and in other juvenile court proceedings and appeals regarding the child. ORS 419A.255(3).
  - May disclose history and prognosis information if clear and present danger to another person or to society. ORS 419A.255 (7)(a).
- c. Juvenile court status -- ORS 419A.255(5).
  - May disclose the name and date of birth of the youth, basis of juvenile court jurisdiction over youth or youth offender and date, time and place of juvenile proceedings in delinquency action. May also disclose the delinquent act alleged in the petition, that portion of court order providing for legal disposition where jurisdiction is based on delinquency and the name and address of the youth's parents.

- d. District Attorney, Assistant Attorney General, juvenile department, DHS and OYA inspection and disclosure of records. ORS 419A.257
- DA or AAG representing the state in a juvenile proceeding, juvenile department, DHS and OYA may inspect and obtain records, reports and other materials described in ORS 419A.255 (1) & (2) to the same extent other parties and attorneys for other parties may inspect and obtain records. ORS 419A.257(1)
  - ORS 419A.255 does not prohibit DA or AAG representing state in a juvenile proceeding, juvenile department, DHS, OYA or other parties in the juvenile proceeding from disclosing to each other the records, reports and other material described in ORS 419A.255 (1) & (2) if disclosure is reasonably necessary to perform official duties related to the involvement of the child, ward, youth or youth offender with the juvenile court or juvenile department. ORS 419A.257(2).
  - Rediscovery is restricted and the records may be used or disclosed only as provided in ORS 419A.257(3).
- e. Juvenile court record expunction -- ORS 419A.262(19), (23),(24), and (25).
- Upon entry of an expunction order, the contact that is the subject of the expunged order shall not be disclosed. DHS must respond that no record or reference to the contact exists. ORS 419A.262 (19).
  - Intentional violation of the confidentiality provisions of expunction statute is cause for dismissal for cause of a public employee and may result in criminal penalties. ORS 419A.262 (24) & (25).

4. Public Assistance – Related Records

- a. **Federal Law** -- Aid to Families with Dependent Children -- Foster Care Payments (Title IV-E of the Social Security Act). 42 USC § 671.
- State must provide safeguards that restrict the use or disclosure of information concerning applicants or recipients to purposes directly connected with the administration of the program. 42 USC § 671(a)(8).
  - May disclose information about known or suspected child abuse or neglect to appropriate authorities. 42 USC §§ 671(a)(9)(A) & (B).
- b. Federal Regulations -- 45 CFR § 1355.21(a) and 1355.30 incorporating by references 45 CFR § 205.50.

- Requires the State to have a statute that imposes legal sanctions on the use or disclosure of information concerning applicants or recipients except for enumerated purposes directly connected with administration of the program.
- Safeguards information such as names, addresses, social and economic conditions and medical information.

c. **State Law** -- ORS 412.074 & 418.990(1).

- No person shall, except for purposes directly connected with the administration of ADC, disclose or receive any information concerning persons applying for or receiving such aid. ORS 412.074(1).
- Subject to criminal penalties. ORS 418.990(1).

d. **State Law** -- ORS 411.320 & 411.990(1).

- For protection of applicant and recipients of public assistance, cannot disclose or use records for purposes other than the administration of public assistance laws. ORS 411.320.
- Subject to criminal penalties for violation. ORS 411.990(1)

5. Medical information

a. **Federal Law** -- Medicaid (Title XIX of the Social Security Act). 42 USC § 1396a(7).

- State must provide safeguards that restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the program.

b. Federal Regulations implementing Medicaid. 42 CFR 431.301- 431.307.

- State must have a statute that imposes legal sanctions and safeguards that restrict the use and disclosure of information. – 42 CFR 431.300.
- Rules specify what constitutes purposes directly connected with the administration of the program. 42 CFR 431.301- 431.307.

c. **Federal Law** -- Health Insurance Portability and Accountability Act (HIPAA). 42 USC §§ 1302 and 1320d.

- Prohibits use or disclosure of protected health information (PHI), which includes information related to the past, present or future physical or mental condition of an individual that identifies the individual directly or indirectly,

except in compliance with HIPAA or state law.

- Preempts state law to the extent HIPAA is more protective than state law.
  - Permits use or disclosure of PHI with proper authorization, if required by law, pursuant to court order in response to proper subpoena.
- d. Federal Regulations implementing HIPAA -- 45 CFR Parts 160 & 164.
- Extensive federal regulations describe requirements for authorization and subpoenas and other exceptions to restricted use and disclosure of PHI.
- e. **State Law** -- Physician-patient privilege. ORS 40.235.
- f. **State Law** -- Health care provider's authority to disclose information during child abuse investigation. ORS 419B.050.
- With notice from either a law enforcement agency or DHS that a child abuse investigation is being conducted, a “health care provider” must permit law enforcement agency, DHS, member agency or member of county multidisciplinary child abuse team to inspect and copy medical records, including but not limited to, prenatal and birth records, of the child involved in the investigation without the consent of the child, parent or guardian. ORS 419B.050(1).
  - “Health care provider” who in good faith discloses records is not civilly or criminally liable for disclosure of a child's medical records even without consent of the child or guardian. 419B.050(1).
  - “Health care provider” has meaning given in ORS 192.519. 419B.050(2).
6. Substance abuse treatment records
- a. **Federal Law** -- 42 USC § 290dd-2 (substance abuse education, prevention, treatment, rehabilitation or research records).
- Makes confidential records regarding identity, diagnosis, prognosis or treatment of patient except in enumerated circumstances.
- b. Federal Regulations -- 42 CFR Part 2.
- Minor patient acting alone has legal capacity under applicable state law to apply and obtain alcohol or drug abuse treatment and any written consent for disclosure may be given only by the minor patient
  - Minor patient where a state requires consent of a parent, guardian or other

person for a minor to obtain alcohol or drug abuse treatment, any written consent for disclosure must be given by both the minor and his/her parent, guardian, or other person authorized to act on minor's behalf

- Fact relevant to reducing threat to life or physical well being of individual may be disclosed to parent, guardian or other person authorized to act on minor's behalf if the minor applicant lacks capacity due to extreme youth or mental or physical condition, or if situation poses threat which may be reduced by communicating facts to person of authority.

c. **State Law** -- ORS 430.399(5).

- Requires client consent for the release of treatment records.

7. Mental Health Treatment Records

a. **State Law** -- ORS 179.505

- Broad definition of "provider" and protected records. ORS 179.505(1)(b) & (c).
- Restricts disclosure of patient records without consent. ORS 179.505(2-17).

b. Psychotherapist-patient privilege ORS 40.230; social worker privilege ORS 40.250; licensed marriage and family therapists privilege ORS 40.262.

8. HIV Information

a. **State Law** -- ORS 433.045(3)

- May not be disclosed without consent, regardless of how the information is obtained, even if it is received directly from the tested individual.

9. Education records

a. **Federal Law** -- Family Educational and Privacy Rights Act. 20 USC § 1232g.

- Requires consent of parent, student or educational surrogate to permit the release of records except in enumerated circumstances.

b. Federal Regulations implementing FEPR. 34 CFR Part 99.

- Describes circumstances where release of information is authorized and limits on redisclosure of information.

- c. Individuals with Disabilities Education Act. 20 USC § 1417(c).
  - d. Federal Regulations implementing IDEA. 34 CFR § 300.500 et seq.
    - Confidentiality requirements generally.
  - e. **State Law** -- ORS 326.565, 326.575, 336.187.
    - Student records shall be confidential.
10. Criminal history
- a. Federal Regulations implementing a Federal Law -- 28 CFR Part 20.
    - Restrictions on disclosure of federal and state criminal offender information records.
  - b. **State Law** -- ORS 181.548.
    - Confidentiality of state criminal record information. See also Oregon State Policy Administrative Rules. OAR Chapter 257..
11. Social Security number -- Section 7 of the Privacy Act of 1974, 5 USC § 552a note 36.
12. Adoption records -- ORS 7.211, ORS 109.440.
13. Public records law -- ORS 192.410 to 192.505
- a. Criminal Investigatory Material exemption -- 192.501(3).
    - Conditionally exempts “investigatory information compiled for criminal law purposes.” The record of an arrest or the report of a crime must be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this exemption limits the constitutional rights guaranteed or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:
      - (a) The arrested person’s name, age, residence, employment, marital status and similar biographical information;
      - (b) The offense for which the arrested person is charged;
      - (c) The conditions of release pursuant to ORS 135.230 to 135.290;
      - (d) The identity of and biographical information concerning both complaining party and victim;

- (e) The identity of the investigating and arresting agency and the length of the investigation:
- (f) The circumstances of the arrest, including time, place, resistance, pursuit and weapons used; and
- (g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice

b. Personnel Discipline Actions --192.501(12).

- Conditionally exempts “a personnel discipline action, or materials or documents supporting that action.”

c. Internal Advisory Communications -- 192.502(1).

- Exempts “communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action.” This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

d. Personal Privacy Exemption -- 192.502(2).

- Exempts “information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance.” The party seeking disclosure has the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

e. Confidential Submissions -- 192.502(4).

- Exempts “information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.”

f. Federal Law Exemption -- 192.502(8).

- Exempts “any public records or information the disclosure of which is prohibited by federal law or regulations.”

g. Oregon State Law Exemptions -- 192.502(9).

- Exempts “public records or information the disclosure of which is prohibited or

restricted or otherwise made confidential or privileged under Oregon law.”

h. Transferred Records -- 192.502(10).

- Exempts records “furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.”

C. Significant Case law

State v. Graville, 304 Or. 428, 746 P.2d 715 (1987) (Notes of the caseworker’s conversations with the victim regarding the events to which they testified were subject to discovery in criminal proceeding. Also, *in camera* review by the trial judge of Children’s Services Division files was required.)

State v. Warren, 304 Or. 424, 746 P.2d 711 (1988) (Children Services Division files were subject to discovery in criminal proceeding, with limitations, and the trial court should have conducted an *in camera* inspection of the files to determine whether any exculpatory evidence was contained therein.)

State ex rel Dugan v. Tiktin, 313 Or 607, 837 P2d 959 (1992) (SCF file contains information made confidential by many sources and requiring court to conduct *in camera* review before authorizing the disclosure of confidential records).

State ex rel Carlile v. Lewis, 310 Or 541, 800 P2d 786 (1990) (Trial judge must conduct *in camera* review of SCF file containing confidential information that court cannot delegate review to defense counsel, who requested the file for discovery purposes.)

State v. Weaver, 139 Or App 207, 911 P2d 969 (1996), rev den 323 Or 483 (1996) (Children Services Division records are confidential by statute; therefore, the trial court must undertake *in camera* inspection of such files requested in discovery by criminal defense).

Kahn v. Oregon, 173 Ore. App. 127, 20 P.3d 837 (2001) (ORCP 36 applies in civil proceeding and SCF records, already in the possession of the plaintiff, were subject to discovery by respondent unless privileged. SCF records protected by ORS § 409.225 are privileged only if they are also records ‘relating to a child’s history and prognosis’ within the meaning of ORS § 419A.255(2)).

State ex rel State Office for Services to Children and Families v. Curtis Williams, Cherise Williams and Dennise Williams, 168 Or. App. 538, 7 P.3d 655 (200) (To the extent that ORS §§ 419A.255 and 419B.035(1) imposed a duty on DHS to keep adoptive home studies confidential, the prohibition was against public disclosure for purposes other than those directly connected with the administration of child welfare laws, and statutory exceptions consistently allow

disclosure to the children’s attorney.)

State ex rel State Office for Services to Children and Families v. Mitchell, Mitchell and Boring, 182 Or. App. 402, 49 P.3d 838 (2002) (Balancing the interest of the CASA to have access to information about prospective adoptive parents against the privacy interests of adoptive families leads to the conclusion that the disclosure to a CASA of home studies that are not submitted to adoption committee is not justified by a CASA’s statutory duties or role but that studies submitted to adoption committee may be disclosed to CASA.)

D. Attorney General Public Records Orders

Brian Posewitz of Tonkin Torp, as counsel for East Oregonian Publishing Company, requested copy of recording of and/or transcription of three juvenile hearings. Citing ORS 419A.255 the request was denied because the statute makes any record of a proceeding involving a child or youth confidential, including a recording or transcript of the hearing. Also, the request was denied under the Oregon Constitution Article 1, §10. Public Records Order, March 5, 2003, Posewitz.

Noelle Crombie, of *The Oregonian*, requested “the personnel review report in the matter of Darlene Walsh-Buntrock and Colin Fitzpatrick, in its entirety.” Citing ORS 192.501(3) the request was denied because the material requested was subpoenaed by the District Attorney’s office in a criminal investigation. Under ORS 192.501(3) the reports will “remain confidential because disclosure likely would interfere with law enforcement proceedings.” Also, ORS 419B.035, in part, protects the confidentiality of information identifying child abuse reports, thus serving as a basis to deny the request, as well. Public Records Order, February 11, 2003, Crombie.

Noelle Crombie, of *The Oregonian*, requested DHS disclose “the agency’s records concerning its care for and supervision of Miranda Gaddis and Ashley Pond and its records concerning all internal reviews, reports, and investigations which were conducted by or on behalf of the agency concerning the discharge of its responsibilities to Miranda and Ashley and which have not been previously been made public.” Citing ORS 192.501(3) the request was denied because the requested materials met the criminal investigatory exemption. Also, the public interest at the current time did not justify release of the records either. Public Records Order, December 18, 2002, Crombie.

Steve Suo, of *The Oregonian*, requested that “selected pieces of information about people treated for drug and alcohol abuse by publicly funded facilities in Oregon” be made available. This request was denied through an application of federal law, 42 USC § 290dd-2 & 42 CFR § 2.4, which restricts DHS’s use and disclosure of patient identifying information. Public records order, January 16, 2003, Suo.

Leslie Zaitz, of *Keizertimes*, requested files concerning a child who had died as a result of an overdose. At the time of the child's death she was a ward of the court and in DHS custody. In requesting these files Zaitz provided an Authorization for Release of Information signed by Green's father. This request was denied based upon an analysis of ORS 419B.035 (Child Abuse Reports and Investigations), of ORS 419A.255, and 419A.255(1)(2). Also, the request was denied through an application of OAR 413-010-0040(1)(a)-(e) and OAR 413-010-0040(2). (6.28.96). This PRO predates ORS 409.225 and HIPAA. Public Records Order, June 28, 1996, Zaitz.

#### E. Attorney General Opinion

No. 7808 - October 3, 1979

First question presented: Is the Governor entitled to inspect confidentiality abuse records maintained by the Children's Services Division pursuant to ORS 418.740? Yes, but only to the extent required for the Governor to determine that laws relating to child abuse are being faithfully executed, and only for that purpose. Second question presented: Is the Attorney General entitled to inspect such child abuse records in conjunction with defense of the Children's Services Division in a suit brought against the division arising out of its handling of a child abuse case? Yes, to the extent required by the legal action







## Required Information for the Client

**To provide or pay for health services:** If the Department of Human Services (DHS) is acting as a **provider** of your health care services or paying for those services under the Oregon Health Plan or Medicaid Program, you may choose not to sign this form. That choice **will not** adversely affect your ability to receive health services, *unless* the health care services are solely for the purpose of providing health information to someone else and the authorization is necessary to make that disclosure. (Examples of this would be assessments, tests or evaluations.) Your choice not to sign **may affect** payment for your services if this authorization is necessary for reimbursement by private insurers or other non-governmental agencies.

This authorization for use and disclosure of information **may also be necessary** under the following situations:

- To determine if you are eligible to enroll in some medical programs that pay for your health care
- To determine if you qualify for another DHS program or service not acting as a health care provider

**This is a Voluntary Form.** DHS cannot condition the provision of treatment, payment, or enrollment in publicly funded health care programs on signing this authorization, except as described above. However, you should be given accurate information on how refusal to authorize the release of information may adversely affect eligibility determination or coordination of services. If you decide not to sign, you may be referred to a single service that may be able to help you and your family without an exchange of information.

---

## Using This Form

1. **Terms Used: Mutual exchange:** A “yes” allows information to go back and forth between the record holder and the people or programs listed on the authorization. **Team:** A number of individuals or agencies working together regularly. The members of the team must be identified on this form.
2. **Assistance:** Whenever possible, a DHS staff person should fill out this form with you. **Be sure you understand the form before signing.** Feel free to ask questions about the form and what it allows. You may substitute a signature with making a mark or by asking an **authorized** person to sign on your behalf.
3. **Guardianship/Custody:** If the person signing this form is a personal representative, such as a guardian, a copy of the legal documents that verify the representative’s authority to sign the authorization must be attached to this form. Similarly, if an agency has custody, and their representative signs, their custody authority must be attached to this form.
4. **Cancel:** If you later want to cancel this authorization, contact your DHS staff person. You can remove a team member from the form. You will be asked to put the cancellation request in writing. Exception: Federal regulations do not require that the cancellation be in writing for the Drug and Alcohol Programs. No more information can be disclosed or requested after authorization is cancelled. DHS can continue to use information obtained prior to cancellation.
5. **Minors:** If you are a minor, you may authorize the disclosure of mental health or substance abuse information if you are age 14 or older; for the disclosure of any information about sexually transmitted diseases or birth control regardless of your age; for the disclosure of general medical information if you are age 15 or older.

6. **Special Attention:** For information about **HIV/AIDS, mental health, genetic testing or alcohol/drug abuse treatment**, the authorization must clearly identify the specific information that may be disclosed and the purpose.

**Re-disclosure:** Federal regulations (42 CFR Part 2) prohibit making any further disclosure of Alcohol and Drug information; state law prohibits further disclosure of HIV/AIDS information (ORS 433.045, OAR 333-12-0270); and state law prohibits further disclosure of mental health, substance abuse treatment, vocational rehabilitation and developmental disability treatment information from publicly funded programs (ORS 179.505, ORS 344.600) without specific written authorization.



**Instructions for Completing the Authorization  
for Use and Disclosure of Information Form DHS 2099**

**PLEASE PRINT ALL INFORMATION**

**SECTION "A"**

<b>Release From</b>	<p>This section is meant for <u>one record holder</u> name. Each source of records requires a separate authorization form.</p> <ul style="list-style-type: none"> <li>▪ Record Holder name needs to be specific. "Medical Providers" in the Release From box is not adequate.</li> <li>▪ This section can reference "DHS" or a specific program within DHS. Assist the client to fully understand what it means to release from all of DHS. The client should have the option to limit the release of information from one or more DHS programs.</li> <li>▪ <u>Include both pages</u> when sending/faxing a signed Authorization to a Record Holder. State law requires that the client receive some of the information on the second page. The Record Holder will want to know that the client has received that information.</li> </ul>
<b>Specific Information to Disclose</b>	<ul style="list-style-type: none"> <li>▪ Some examples of specific information are assessments, treatment plans, results of urinalysis, psychological report, financial information, and case plans.</li> <li>▪ Do not indicate "entire record" unless it is necessary to accomplish the purpose. (See section "B" below for definition of "Purpose".)</li> </ul>
<b>Mutual Exchange; yes/no</b>	<ul style="list-style-type: none"> <li>▪ If the client agrees to mutual exchange, the exchange needs to stay within the purpose and specific information stated on the form.</li> <li>▪ Mutual Exchange creates the opportunity to ask clarifying questions about the specific information identified on the form.</li> <li>▪ Mutual Exchange does not open all records for discussion between the record holder and the record requester.</li> <li>▪ Only if Mutual Exchange is acknowledged with a "yes" can information flow both ways.</li> </ul>

**STATEMENT**

<p><b>If the information contains any of the types of records or information listed below, additional laws relating to use and disclosure may apply etc.</b></p>	<ul style="list-style-type: none"> <li>▪ Explain to the client that there are very strict state and/or federal confidentiality laws to protect these sensitive records.</li> <li>▪ Even if the "Specific Information to be Disclosed" section notes the sensitive records being requested, the lines in this statement must be initialed.</li> </ul>
--	--

**SECTION "B"**

<p><b>Release To (address required if mailed) If releasing to team members, list members</b></p>	<ul style="list-style-type: none"> <li>▪ The client must be given the option to complete a separate form for each partner or to refuse disclosure to a particular partner on the list.</li> <li>▪ Record holders may have their own procedures on mailing or faxing requested records. When requesting that the records be faxed, also include, whenever possible, the address for the records to be mailed.</li> <li>▪ This section can reference "DHS" or a specific program within DHS. Assist the client to fully understand what it means to release to all of DHS. The client should have the option to limit the release of information to one or more DHS programs.</li> </ul>
--	--

**SECTION “B”**

<p><b>Purpose</b></p>	<ul style="list-style-type: none"> <li>▪ The stated purpose should support the work being done for and with the client. It is not a generic permission for the use or disclosure for any and all information.</li> </ul>
<p><b>Expiration Date or Event*</b></p>	<ul style="list-style-type: none"> <li>▪ This field must be completed with either an event or a date.</li> <li>▪ The authorization is valid for one year from the date of signing, unless otherwise clearly stated.</li> <li>▪ Although using an “event” in this field is allowable, the record holder may not know when or if the event has occurred.</li> </ul>

**SECTION “C”**

<p><b>Full Signature OR authorized Personal Representative</b></p>	<ul style="list-style-type: none"> <li>▪ A client or authorized personal representative should never be asked to sign a blank or incomplete authorization form.</li> <li>▪ Signature of both personal representative and the individual are not required.</li> <li>▪ Definition of “Personal Representative” may vary between programs. If unsure, check with your manager.</li> </ul>
<p><b>Signature and Printed Name of Agency Staff Person Providing this Copy.</b></p>	<ul style="list-style-type: none"> <li>▪ Agency staff signature certifies that this is a true copy of the original Authorization document.</li> <li>▪ DO NOT SIGN THE ORIGINAL AUTHORIZATION. Make a copy, and sign the copy before mailing or faxing.</li> <li>▪ When faxing or mailing, <u>send both pages</u> of the Authorization. The second page includes information that is required by law. Healthcare and other DHS partners need to know that the client has been fully informed.</li> </ul>

**INSTRUCTIONS FOR PAGE 2**

<p><b>Voluntary Signature</b></p>	<ul style="list-style-type: none"> <li>▪ Client signature is voluntary; therefore the client may decline to sign this authorization form.</li> <li>▪ Declining to sign may impact the ability of DHS to coordinate client services with health care professionals.</li> <li>▪ Without a signed Authorization, DHS may be unable to verify eligibility requirements and may be unable to refer the client to other services.</li> </ul>
<p><b>Cancellation (Revocation)</b></p>	<ul style="list-style-type: none"> <li>▪ Inform the client of the right to cancel (revoke) the Authorization.</li> <li>▪ Except for Drug and Alcohol Programs, the client is required to make the cancellation request in writing.</li> <li>▪ Write the method and date of the cancellation on the Authorization form, add the current date if different from the cancellation date, initial the cancellation entry, and place the Authorization form in the client file.</li> <li>▪ The client may cancel (revoke) disclosure to one or more team members listed on the Authorization.</li> <li>▪ If the Authorization(s) has been placed in the ORCA system, make sure the cancellation is noted in that system as well as in the paper file.</li> </ul>
<p><b>Minors</b></p>	<ul style="list-style-type: none"> <li>▪ A Program or subject-specific state laws may impact decisions about Authorization forms signed by minors. Check with your manager.</li> </ul>

**INSTRUCTIONS FOR PAGE 2****Re-disclosure**

- Re-disclosure is the disclosure of information to a person, DHS program, DHS subcontracted entity, or other entity beyond what is originally authorized. Literally, this means disclosing the information for a new or different reason, to someone other than originally intended.
- Federal and state regulations prohibit making any further disclosure of Alcohol/Drug and HIV/AIDS information.

**► Both Pages:**

- This form is not valid without Page two.
- Include both pages when sending/faxing a signed Authorization to a Record Holder. State law requires that the client receive some of the information on the second page. The Record Holder will want to know that the client has been made aware of that information.

**► Form Completion**

- The Authorization form can be filled out electronically and printed for client signature
- After being completed and signed, Authorization forms can be stored in the ORCA database, as long as the client-signed form is maintained in the paper file. If needed, more than one Authorization form for an individual client can be stored in this database.
- If completed Authorization forms are stored in a database, make sure you have a process in place for revocation. If a signed Authorization is later revoked (cancelled) that revocation must be noted in the database as well as in the paper file.
- The Authorization form can be pre-printed with standard multidisciplinary team members, as long as the client is given the option to omit one or more team members.
- Do not use labels on the Authorization form.
- When completed properly, the form is able to stand alone to process a requested disclosure.

- **Trouble Shooting:** If the Authorization form you send out has been completed, signed, and sent properly, and a record holder refuses to accept it, call the Privacy Program at 503-945-5780.

**Common Mistakes Made when Completing an Authorization Form**

1. Writing illegibly. If your handwriting is difficult to read, print or type the information onto the form.
2. Requesting that records be sent to you but not providing a mailing address or fax number to a Record Holder.
3. Mailing or faxing only one page of the Authorization form. The Authorization form is two pages long, and both pages must be included when mailed or faxed.
4. Asking the client to sign an Authorization form that has not been completed. Clients have the right to be fully informed about what they are signing and what that will mean to them.
5. Being too general in the "Specific Information to be Disclosed" or the "Purpose" section.
6. Not including the Date of Birth in order to more easily identify the individual.
7. Signing the original Authorization to certify that it is a true copy, rather than signing a copy.
8. Having someone without sufficient authority sign the Authorization on behalf of the client.

## Definitions

**Disclosure:** Information or documents provided to other persons:

- If required or permitted by state law, federal law, federal regulations or state administrative rules.
- Pursuant to a court order.
- As required by a subpoena. (Subpoena Duces Tecum)
- In response to a client/ public records request.
- As part of discovery.
- In order to facilitate the provision of services to children, parents or families.
- In other circumstances where DHS is required or authorized to release information or documents.

**Discovery:** Ongoing statutory obligation to disclose specific types of information and documents to all parties in a juvenile court proceeding within mandated time lines.

	<p>Department of Human Services  <b>CHILDREN, ADULTS &amp; FAMILIES</b></p>	<p><b>NUMBER:</b> III-F.1.6  <b>OAR:</b> 413-350-0000 thru 0090</p>
	<p><b>ADMINISTRATIVE SUPPORT INDEX</b></p>	<p><b>SECTION:</b> F. Information Management</p>
	<p><b>ISSUED BY:</b> Office of Safety and Permanency for Children  <b>FINAL:</b> 11-01-07</p>	<p><b>SUBSECTION:</b> 1. Administrative Information management</p>
<p><b>SUBJECT:</b> 6. Inspection and Copying of Records – OAR</p>		

**REFERENCES:**

ORS 192.310, 192.420, 192.430, 192.440, 192.496, 192.501, 192.502  
 ORS 409.010  
 ORS 418.005  
 ORS 419B.035  
 OAR 407-003-0010  
 OAR 407-005-0010  
 407-005-0010  
 American Disabilities Act

**413-350-0000****Purpose**

The purpose of these rules (OAR 413-350-0000 to 413-350-0090) is to prescribe procedures for viewing and copying public records held by the Child Welfare program and describe the process for charging fees when the Department makes the public records available.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 192.420, 192.430, 192.440, 409.010, 418.005, 419B.035

**413-350-0010****Definitions**

The following definitions apply to OAR 413-350-0000 to 413-350-0090:

- (1) "Custodian" means the Child Welfare program manager or designee of the program manager responsible for the service location at which the record is located.
- (2) "Public record" includes any writing containing information relating to the conduct of the public's business, including but not limited to records prepared, owned, used, or retained by a public body regardless of physical form or characteristics.

- (3) "Writing" means the definition of "writing" in the version of OAR 407-003-0000 that is current when the public record request is made.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 192.420, 192.430, 192.440, 409.010, 418.005, 419B.035

#### **413-350-0020**

##### **Access**

Any person has a right to inspect any public record held by the Child Welfare Program to the extent provided by these rules (OAR 413-050-0000 to 413-050-0090).

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 192.420, 192.430, 192.440, 409.010, 418.005, 419B.035

#### **413-350-0030**

##### **Access to Electronic Public Records**

When access is permitted under these rules (OAR 413-350-0000 to 413-350-0090):

- (1) If the public record is maintained in electronic form, Child Welfare shall provide copies of the electronic public record, in the form requested, if available.
- (2) If the public record is not available and maintained in the form requested, Child Welfare shall provide copies of the public record in the form in which it is maintained.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 192.420, 192.430, 192.440, 409.010, 418.005, 419B.035

#### **413-350-0040**

##### **Exemptions From Disclosure**

- (1) Per ORS 192.496, the following records are exempt from disclosure:
  - (a) Records less than 75 years old that contain information about the physical or mental health or psychiatric care or treatment of a living individual, if the public disclosure thereof would constitute an unreasonable invasion of privacy. The party seeking disclosure shall have the burden of showing by clear and convincing evidence that the public interest requires disclosure in the particular instance and that public disclosure would not constitute an unreasonable invasion of privacy.

- (b) Records less than 75 years old that were sealed in compliance with statute or by court order. Such records may be disclosed upon order of a court of competent jurisdiction or as otherwise provided by law.
  - (c) Records of a person who is or has been in the custody or under the lawful supervision of a state agency, a court or a unit of local government, are exempt from disclosure for a period of 25 years after termination of such custody or supervision to the extent that disclosure thereof would interfere with the rehabilitation of the person if the public interest in confidentiality clearly outweighs the public interest in disclosure. Nothing in this subsection, however, shall be construed as prohibiting disclosure of the fact that a person is in custody.
  - (d) Student records required by state or federal law to be exempt from disclosure.
- (2) Per ORS 192.501, the following public records are exempt from disclosure:
- (a) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation that has been concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery or disposition statutes to a party to litigation or potential litigation.
  - (b) Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:
    - (A) The arrested person's name, age, residence, employment, marital status and similar biographical information;
    - (B) The offense with which the arrested person is charged;
    - (C) The conditions of release pursuant to ORS 135.230 to 135.290;
    - (D) The identity and biographical information concerning both complaining party and victim;
    - (E) The identity of the investigating and arresting agency and the length of the investigation;

- (F) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and
  - (G) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.
- (c) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.
- (d) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825, until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under ORS 659A.850.
- (e) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180.
- (f) A personnel discipline action, or materials or documents supporting that action.
- (g) Computer programs developed or purchased by or for any public body for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from such computer system, and any associated documentation and source material that explain how to operate the computer program. "Computer program" does not include:
- (A) The original data, including but not limited to, numbers, text, voice, graphics, and images;
  - (B) Analyses, compilations, and other manipulated forms of the original data produced by use of the program; or
  - (C) The mathematical and statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.
- (h) Data and information provided by participants to mediation under ORS 36.256.
- (i) Investigatory information relating to any complaint or charge filed under ORS chapter 654, until a final administrative determination is made or, if a citation is issued, until an employer receives notice of any citation.

- (3) Per ORS 192.502, the following records are exempt from disclosure:
- (a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.
  - (b) Information of a personal nature such as, but not limited to, that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.
  - (c) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.
  - (d) Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of a person in custody of the Department of Corrections or substantially prejudice or prevent the carrying out of the functions of the Department of Corrections, if the public interest in confidentiality clearly outweighs the public interest in disclosure.
  - (e) Any public records or information the disclosure of which is prohibited by federal law or regulations.
  - (f) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.
  - (g) Public records or information described in this rule, furnished by the public body originally compiling, preparing, or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.
  - (h) Employee and retiree address, telephone number, and other non-financial membership records and employee financial records maintained by the Public Employees' Retirement System pursuant to ORS chapters 238 and 238A.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 192.496, 192.501, 192.502, 409.010, 418.005, 419B.035

### **413-350-0050 Supervisory Review**

Prior to any person viewing or copying a public record held by Child Welfare, the supervisor or person designated by the branch must determine which material in the record is exempt from disclosure. If the supervisor or person designated by the branch has any doubt as to whether information contained in the record is exempt from disclosure, the supervisor must consult with designated or Central office staff.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 192.496, 192.501, 192.502, 409.010, 418.005, 419B.035

### **413-350-0060 Time Frame**

Child Welfare provides an opportunity for the inspection and copying of records when access and copying is otherwise permitted under these rules (OAR 413-350-0000 to 413-350-0090). To protect its records and prevent interference with the regularly scheduled duties of its staff, Child Welfare and the person requesting to inspect the record shall establish a reasonable time at which the records may be inspected. The time frame for inspection shall normally be within ten working days. When this time frame is not possible, the custodian or person designated by the branch will discuss the reasons with the requester and provide an expected date for inspecting the record. If copies are requested, Child Welfare shall make them within a reasonable time period, not to exceed five working days from the date of the request for the specific material, and shall mail the material to the requester.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 192.420, 192.430, 192.440, 409.010, 418.005, 419B.035

### **413-350-0070 Viewing and Copying Procedures**

- (1) When Child Welfare is required or permitted to make records available pursuant to ORS 419B.035, the identities of the abuse reporters and victims will be deleted from the material provided for examination. Prior to allowing viewing and copying of the public record, Child Welfare shall separate any material that is exempt from disclosure from non-exempt material, and make the non-exempt material available for examination.
- (2) Names, addresses, and other identifying information of mandatory abuse reporters, as well as voluntary abuse reporters and persons making complaints who requested

confidentiality, must be covered to protect their identity. The names of alleged perpetrators if the perpetrators are juveniles in Child Welfare custody and the names of victims must also be covered.

- (3) Child Welfare shall provide the person requesting examination a place to review the record. A person designated by Child Welfare shall sit with the person reviewing the record in order to assure it is not altered in any way.
- (4) The person viewing the record may designate pages to be copied, or may request copies of specific information contained in the record. Only Child Welfare staff may copy the designated material.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 192.420, 192.430, 192.440, 409.010, 418.005, 419B.035

#### **413-350-0080**

##### **Charges**

- (1) Child Welfare shall charge for the cost of making the record available to the extent permitted by OAR 407-003-0010.
- (2) Child Welfare shall inform the requester of estimated charges as provided by OAR 407-003-0010(5).
- (3) The requester may ask Child Welfare for a waiver of the charges for the cost of making the record available. Child Welfare may reduce or waive fees as provided by OAR 407-003-0010.
- (4) If Child Welfare denies the initial request for a waiver of all or part of the actual cost of providing the record, the requester may proceed as provided by OAR 407-003-0010(7).

Stat. Auth.: ORS 192.430, 409.050, 418.005

Stats. Implemented: ORS 192.430, 192.440, 409.010, 418.005

#### **413-350-0090**

##### **Availability of Alternative Print Format**

Upon request of a person with a disability for public records otherwise available to the requester under these rules (OAR 413-350-0000 to 413-350-0090), Child Welfare will consult with that individual about making the requested records available in alternative print format at no additional cost to the requester and follow OAR 407-005-0010(8).

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: 409.010, 418.005

<b>Policy Title:</b>	Public Record Request and Fee				
<b>Policy Number:</b>	DHS-010-010	<b>Version:</b>	1.0	<b>Effective Date:</b>	06/09/2008

---

 Approved By: *Deputy Director of Operations*


---

 Date Approved

---

## Overview

**Description:** This policy clarifies the process to make a public records request for records held by the Oregon Department of Human Services (DHS). Additionally, the policy and its associate procedures specify the costs that may be charged to prepare the records for distribution and the process for requesting the reduction or waiver of fees.

The State of Oregon and DHS seek to make public records available to the public for review, except those records that are specifically exempted from disclosure by federal or state statute. These exemptions generally are intended to prevent invasion of privacy and the use of public records for personal, commercial or political gain; and to meet federal and state confidentiality requirements. For more information about exemptions see Oregon Revised Statute (ORS) 192.410 to 192.505.

**Clarification:** This policy and supporting Oregon Administrative Rule (OAR) do not supersede any existing specific request fees, such as request for birth certificates.

**Purpose/Rationale:** The purpose of this policy is to ensure that all requests for public records are handled in a manner that is consistent, efficient, timely and in compliance with state and federal public records law. Charging for the reasonable costs to prepare the records for distribution enables DHS to maintain fiscal integrity.

**Applicability:** This policy applies to all DHS staff including employees, volunteers, trainees and interns and any entity requesting records.

**Failure to Comply:** Failure to comply with this policy may result in disciplinary action, up to and including dismissal from state service.

## Policy

1. Public records will be available as appropriate.
  - a. Public records shall be made available upon request, except those records which are exempt from disclosure.
    - A. Records that are exempt from disclosure are defined in ORS Chapter 192 and OAR Chapter 407 Division 003.

- B. Exemptions are generally intended to prevent invasions of privacy and use of public records for personal, commercial or political gain. Exempted information includes, but is not limited to, social security information, home addresses, employment applications, medical records, certain investigative records, etc.

2. A complete request for records.

- a. A complete request for records includes:
  - A. A description of the information requested, as specific as possible, including the type of records, subject matter, approximate dates the records were created, and the names of the persons involved.
  - B. Contact information for the requestor: name, address and telephone number of the person or organization requesting the public records.
  - C. The desired format for the records to be received (hard paper copy, electronic copy by e-mail [PDF or other format], electronic copy on disc, CD, or other media) and the number of copies requested.
  - D. The desired date by which the records are requested to be delivered.

3. DHS coordination of public records requests.

- a. The Office of Communications (OC), as part of the Administrative Services Division, is responsible for coordinating external communications across the agency and will be responsible for coordinating all public records requests. OC has a team of information officers assigned to represent each of the DHS divisions. Each officer oversees and coordinates the external communication activities for their respective division. This coordination is extended to include the coordination of responses to public records requests to help ensure that offices and programs handle requests consistently and appropriately.
  - A. Processing and compiling a public records request.
    - i. The program staff responsible for maintaining the requested information will compile the information, but will work with the appropriate OC representative to ensure the response process aligns with DHS policy as well as all federal and state laws and rules regarding public and private information.
    - ii. Information requests involving a DHS employee, intern or volunteer will be processed in coordination with the DHS Human Resources Office.
    - iii. Some information requests may require a written release by the involved client, parent or guardian of a client or other authorized individual as required by applicable federal and state law before being released. The Requestor will be notified when this situation arises.
  - B. Tracking public records requests.
    - i. OC will maintain a database of requests to enable DHS to track all requests for public records in one central location.

4. DHS will acknowledge requests and notify the Requestor of the process.

- a. DHS shall provide the Requestor notice of receiving the record request and an estimate of costs to prepare the records no later than 5 business days from receipt of the request.
  - A. The notice will include acknowledgment of the request, a copy of this policy, a copy of the fee schedule, an estimate of the expected cost of meeting the request or a date when an estimate will be made available, the format in which the information will be provided, delivery information or information about where the records can be

inspected if copies cannot be delivered, the expected date of delivery and information about how payment for the request can be made to DHS.

- i. To protect the security of its systems, DHS will not permit the transmittal of records on a disk or other electronic device that must be connected to its systems, unless that disk or device is procured and provided by DHS.
- B. Copies of records shall be provided at a cost reasonably calculated to reimburse DHS for the actual costs incurred in making the records available.
- C. If the estimated fee exceeds \$25, the Requestor must provide written authorization in order for DHS to proceed.

**5. DHS costs to prepare records.**

- a. DHS will charge a fee for providing copies of records in accordance with the established fee schedule ([DHS-010-010-02](#)).
  - A. Fees are calculated to reasonably reimburse DHS for the costs incurred in making the records available.
    - i. Activities involved in preparing records for distribution include, but are not limited to: locating, compiling, summarizing, printing, redacting, copying and distributing the information, office supplies to conduct each activity and taking any other steps reasonably required to make the information available.
- b. DHS will reduce or waive fees in accordance with ORS 192.440(4) and OAR 407-003-0010(6).
  - A. DHS may furnish copies of public records without charge or at a reduced fee, if DHS determines the reduction or waiver is in the public interest pursuant to ORS 192.440(4).
  - B. All waivers must be approved in advance by a DHS deputy director, a division assistant director, or an authorized delegate of either as authorized with a signed delegation of authority for said delegate.
  - C. Factors that may be considered when determining whether to reduce or waive fees:
    - i. The overall cost to be incurred by DHS is negligible;
    - ii. Supplying the requested records or documents is within the normal scope of DHS' normal business;
    - iii. Requiring payment would cause extreme or undue financial hardship upon the requestor; or
    - iv. Discovery requests are being made as part of pending administrative, judicial, or arbitration proceeding.

**6. Forms and method of payment.**

- a. The Requestor can make arrangements to make a payment at the delivery of the records or be billed for the charges ([DHS Form AR 3300](#)).
  - A. DHS is prepared to accept checks, money orders or visa payments.

**Procedures that apply**

[DHS-010-010-01](#): Public Record Request, Receipt, Payment and Delivery Procedure

[DHS-010-010-02](#): Public Record Request Fee Structure Procedure

[DHS-010-010-03](#): Public Record Request Fee Reduction or Waiver Procedure

## Forms that apply

DHS 5107: Request for Disclosure of Public Records Form - [PDF](#) or [Word](#)

DHS 5106: Receipt of Public Records Request Form - [PDF](#) or [Word](#)

DHS 5108: Request for Reduction or Waiver of Public Record Request Fee - [PDF](#) or [Word](#)

DHS 0286: Signature Authorization – [PDF](#) or [Word](#)

AR 3300: Account Receivable/Billing Request - [PDF](#) or [Word](#)

## References

[ORS 192.005](#) to 192.170: Public Records Policy

[OAR 407-003-0000](#): DHS Administrative Services Division/Director's Office Public Records Fees

## Definitions

**Public Record:** Any and all information held by DHS, not protected by federal or state confidentiality rules, laws or statutes.

## Contacts

**Name:** Patty Wentz    **Phone:** (503) 947-5361    **Email:** [DHS.PublicRecords@state.or.us](mailto:DHS.PublicRecords@state.or.us)

## Policy History

- **Version 1.0:**
  - 06/09/2008 – Initial Release

<b>Policy Title:</b>	<b>Client Privacy Rights</b>				
<b>Policy Number:</b>	DHS-100-002	<b>Version:</b>	2.0	<b>Effective Date:</b>	Upon Approval

Signature on File in the office of the Chief Administrative Officer

**Approved:** Jeremy Emerson, Interim CAO

**Date:** July 20, 2009

### Purpose:

This policy describes the privacy rights of Department clients to:

Request or receive the Department's Notice of Privacy Practices (section 1); request restrictions on the use and disclosure of information (section 2); request information by alternative means or in alternative locations (section 3); request access to their information (section 4); request amendments to their information (section 5); request an accounting of disclosures of protected health information (section 6); and file complaints about the disclosure of their information (section 7).

### Policy:

#### 1. Department Notice of Privacy Practices. Clients have the right to receive adequate notice from the Department of privacy practices.

- a. The Department will make available to each client a notice of Department privacy practices that describes the responsibility of the Department to maintain the privacy of protected health information and includes a description that clearly informs the client of the types of uses and disclosures the Department is permitted or required to make;
- b. The Department will provide all clients in direct care settings a notice of Department privacy practices and will request the client's signature on an acknowledgement of receipt form.
- c. Whenever there is a material change in Department privacy practices, the Department will revise the Notice of Privacy Practices and make the revised notice available to all clients. Any such changes to Department privacy practices will apply to information the Department already has as well as to any information the Department receives in the future;
- d. A copy of the Notice of Privacy Practices will be posted for public viewing at each Department worksite and on the Department website; and
- e. The Department will give a paper copy of the Department Notice of Privacy Practices to any person upon request.

## 2. Rights of clients to request restrictions on the use and disclosure of their information.

A client may ask that their information not be used by DHS or that their information not be given to certain people who would otherwise have access to the information.

Example #1 -- a client has a dispute with a caseworker and does not want the caseworker to have any access to or use of information about the client. The client may submit a request for restriction of use or disclosure of their information being provided to the caseworker.

Example #2 – a client may request that DHS never disclose their information (or certain sensitive information) to a particular family member or person in the household that is normally involved in their case.

- a. All requests for restrictions will be made by having the client complete a [DHS 2095](#), "Request for Restriction of Use and Disclosures."
  - A. If a restriction is granted, it is binding on all other DHS staff and its business associates. A decision to agree to a restriction should be approved by a supervisor and steps should be taken to tell all other potential DHS staff and business associates about the restriction, unless disclosure of the existence of the restriction would violate the restriction itself – including clearly marking the file and making a record in any electronic file associated with the restriction.
- b. The Department is not required to agree to a restriction requested by the client. The Department may deny or implement a less stringent restriction request.
  - A. The Department will not agree to restrict uses or disclosures of information under the following conditions if the restriction would adversely affect the quality of the client's care or services:
 

In Example #1 – DHS is not required to limit access by caseworkers who are involved in decision-making in a case.

    - i. If the restriction that would limit or prevent the Department from making or obtaining payment for services;
    - In Example #2 – If the client has other medical coverage that is primary, DHS can decline to agree to a restriction that would keep DHS from obtaining payment for covered services.
    - ii. If the restriction would adversely affect the ability to administer Department programs and services;
  - B. If the client needs emergency treatment and the restricted protected information is needed to provide such treatment, the Department may use or disclose the restricted protected information to a provider, for the limited purpose of providing treatment. However, once the emergency situation subsides the Department will

ask the provider not to redisclose the Information;

- C. For information about substance abuse treatment (covered by 42 CFR part 2) or vocational rehabilitation (covered by 34 CFR 361.38), the Department will honor requests for restriction to limit sharing the information with another Department program.
- c. The Department will document the client's request, and the reasons for granting or denying the request in the client's hard copy or electronic Department case record file. The client will be informed about the Department's decision.
- d. Prior to any use or disclosure of client information, Department staff must confirm that the particular use or disclosure has not been granted a restriction by reviewing the client's case file.
- e. The Department may terminate its agreement of a restriction in each of the following situations:
  - A. The client agrees to or requests termination of the restriction in writing.
  - B. The client orally agrees to or requests termination of the restriction. The Department will document the oral agreement or request in the client's Department case record file.
  - C. The Department informs the client in writing that the Department is terminating its agreement to the restriction. Information created or received while the restriction was in effect shall remain subject to the restriction.

### **3. Rights of clients to request to receive information from the Department by alternate means or at alternate locations.**

This right involves how the Department communicates with the client.

Example #1 – A client may request alternate means or location for communications because of a risk of domestic violence.

Example #2 – A client of the Department's services, programs or activities may request to receive mail or telephone communications in a manner that does not disclose the client as a participant of the program. For example, a client of the Family Planning Expansion Program may request that information not be sent to their home and that the program not call their home.

- a. Clients have the right to request to receive information from the Department by specific means, such as mail, e-mail, fax or telephone, or at alternate locations.
  - A. If requesting an alternate means or location the client must be specific about the request.
  - B. Requests may be made orally or in writing.

- C. If a client makes a request orally, the Department will document the request and ask for the client's signature. ([DHS 2101](#), "Special Handling for Confidential Communications")
- D. If a client makes a request by telephone or electronically, the Department will document the request and verify the identity of the requestor.
- E. The client is not required to explain the basis for the request.
- F. The Department will notify the client of its acceptance of the request, in a manner that is consistent with the alternate means of communication that was granted.
- b. The Department must accommodate reasonable requests by clients to receive communications by alternate means, such as by mail, e-mail, fax, telephone or alternate location; and
- c. The Department shall update all applicable systems and associate systems with the requested method of communication.
- d. Prior to any information being sent to the client, Department staff must confirm if the client has requested an alternate location or by alternate means, and if the Department has granted that request.
- e. The Department may terminate its agreement to an alternate location or method of communication if:
  - A. The client agrees to or requests termination of the alternate location or method of communication in writing or orally. The Department will document the oral agreement or request in the client's Department case record file.
  - B. The Department informs the client that the Department is terminating its agreement to the alternate location or method of communication because the alternate location or method of communication is not effective. The Department may terminate its agreement to communicate at the alternate location or by the alternate means if:
    - i. The Department is unable to contact the client at the location or in the manner requested; or
    - ii. If the client fails to respond to payment requests if applicable.
- f. The Department will comply with the Address Confidentiality Program ORS 192.820-192.868, upon request by a program participant under ORS 192.836.

#### **4. Rights of clients to access their information.**

- a. Clients have the right to access, inspect, and obtain a copy of information on their own cases that is maintained in a designated record set. The designated record set consists of information about the client maintained in Department files or records used, in whole or in part, by the Department to make decisions about the client, consistent with federal law and the Oregon Public Records Law.

- b. Clients may request to access, inspect and obtain information about themselves or information that the Department uses in whole or part to make decisions about them, unless an access restriction is authorized by law or policy.
- c. Requests for access may be made having the client complete a [DHS 2093](#), "Request for Access to Records."
- d. If the Department maintains information about the client in a record that includes information about other people, the client is only authorized to see information about him or herself. If the information is about both the client and another person, the client can see the information that is about him or herself only. Department must take steps to ensure the information about other people is protected.
- e. If a person identified in the file is a minor child of the client, and the client is authorized under Oregon law to have access to the minor's information or to act on behalf of the minor in making decisions about the minor's care, the client may obtain information about the minor.
- f. If the person requesting information is recognized under Oregon law as a guardian or legal custodian of the client and is authorized by Oregon law to have access to the client's information or to act on behalf of the client for making decisions about the client's services or care, the Department will release information to the requestor.
- g. Upon presentation of the order of appointment by the Court Appointed Special Advocate (CASA), any agency, hospital, school organization, division, office or department of the state, doctor, nurse, or other health care provider, psychiatrist, police department or mental health clinic shall permit the CASA to inspect and copy any records relating to the child or ward involved in the case, without the consent of the child, ward or parents as defined in ORS 419A.170.
- h. Persons acting under the authority of the system in ORS 192.517 (1), to protect and advocate the rights of individuals with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.) and the rights of individuals with mental illness under the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. 10801 et seq.), shall have access to all records, as defined in ORS 192.515, as provided in ORS 192.517.
- i. In the following limited circumstances, the Department may deny clients or their representative's access to the client's own health information:
  - A. Psychotherapy notes. This is limited to the notes maintained by a mental health professional that are not kept in the official file.
  - B. Information compiled for use in civil, criminal, or administrative proceedings. This exception usually refers to the Department staff's notes and materials that are created or developed in connection with the legal proceeding, rather than the case file; however, if there are legal proceedings in which the Department of Justice is representing the Department, consult with the DOJ attorney before providing information to the client or their representative;

- C. Information that is subject to the federal Clinical Labs Improvement Amendments of 1988, or exempt pursuant to 42 CFR 493.3(a)(2). This means that rarely can a lab directly give lab results directly to the patient, but must give the results to the health care professional who ordered the test. The health care professional then provides the lab result to the patient.
  - D. Documents protected by attorney-client privilege or attorney work-product. These documents will have the name of the attorney on it, have been marked as attorney-client privileged, is part of a file that is marked as attorney-client privileged, or the document contains information that is identifiable as legal advice intended for confidential use by the Department;
  - E. Information where release to the client is prohibited by State or Federal Laws. There are very few instances where the client's own information cannot be released to them, except as described in paragraphs A-G of this section. Examples may include national security matters. These rare situations should be discussed with the DHS Privacy Officer.
  - F. Information that, in good faith, the Department believes can cause harm to the client, participant or to any other person;
  - G. Information obtained under a promise of confidentiality from someone other than a health care provider to the extent that access would reveal the source of the information.
- j. Review of denial of access must be provided upon client's request.
- k. If the Department denies access under subsection 4h., the client has the right to have the decision reviewed by a licensed health care professional (for health information) or other designated staff (for other information) not directly involved in making the original denial decision. The Department will then proceed based on the decision from this review
- A. The Department must promptly refer a request for review to the designated reviewer. [See subsection 4.i. for timelines].
  - B. The reviewer must determine, within the 30-60 calendar day time limit noted in C.1.B, whether or not to approve or deny the client's request for access, in accordance with this policy.
  - C. The Department must promptly notify the client in writing of the reviewer's determination; and take action to carry out the reviewer's determination.
- l. The Department must act on a client's request for access no later than 30 calendar days after receiving the request, except in the case of written accounts under ORS 179.505 which must be disclosed within five (5) calendar day.
- A. In cases where the information is not maintained or accessible to the Department, and does not fall under ORS 179.505, the Department must act on the client's request no later than 60 calendar day after receiving the request.

- B. If the Department is unable to act within these 30-calendar day or 60 calendar day limits, the Department may extend this limitation by up to an additional 30 calendar day, subject to the following:
  - i. The Department must notify the client in writing of the reasons for the delay and the date by which the Department will act on the request.
  - ii. The Department will use only one such 30-calendar day extension to act on a request for access.
- m. If the Department grants the client's request, in whole or in part, the Department must inform the client of the access decision and provide the requested access.
  - A. The Department must provide the requested information in a form or format requested by the client, if readily producible in that form or format. If not readily producible, the Department will provide the information in a readable hard-copy format or such other format as agreed to by the Department and the client. The Department need only provide the requested information once.
  - B. If the requested information is maintained with an entity other than DHS, the Department will inform the client of where to request access.
  - C. The Department may provide the client with a summary of the requested information, in lieu of providing access, or may provide an explanation of the information if access had been provided, if:
    - i. The client agrees in advance; and
    - ii. The client agrees in advance to any fees the Department may impose, per 4.m.E, below.
  - D. The Department must arrange with the client for providing the requested access in a time and place convenient for the client and the Department. This may include mailing the information to the client if the client so requests or agrees.
  - E. Fees: A client, or personal representative, who requests a copy of their information, a written summary, or explanation of such information is responsible for paying a reasonable, cost-based fee, (unless the fee is waived pursuant to Department policy) The costs are limited to covering the following:
    - i. Copying the requested information, including the costs of supplies and of the labor of copying;
    - ii. Postage, when the client has requested or agreed to having the information mailed; and
    - iii. Preparing an explanation or summary of the requested information, if agreed to in advance by the client, per 3.m.C., above.
- n. If the Department denies access, in whole or in part, to the requested information, the Department must:

- A. Offer the client access to any other requested client information, after excluding the information to which access is denied;
- B. Provide the client with a timely written denial. The denial must:
  - i. Be sent or provided within the time limits specified in subsection 4.k., above;
  - ii. State the basis for the denial;
  - iii. If the reason for the denial is due to danger to the client or another, explain the client's review rights as specified in subsection 4.j. above, including an explanation of how the client may exercise these rights;
  - iv. Provide a description of how the client may file a complaint with the Department, and if the information denied is protected health information, with the United States Department of Health and Human Services (DHHS)-Office for Civil Rights.

## 5. Rights of clients to request amendments to their information.

Clients have the right to request that the Department amend their information in Department files.

Example #1 – A report mistakenly includes a typographical error, in which a birthday is listed as 1989 rather than 1998. The client seeks an amendment to correct the error.

Example #2 – A report states that on a certain date, the client was agitated, distracted and rude to the caseworker. The client seeks an amendment asking to delete the words used to describe his or her behavior.

- a. All requests for amendments to health information will be made by having the client complete a [DHS 2094](#), "Request for Amendment of Health Record".
- b. The Department must act on the client's request no later than 60 calendar days of receiving the request, except that if the Department is unable to act on the request within 60 calendar days, the Department may extend this time limit by up to an additional 30 calendar days, subject to the following:
  - A. The Department must notify the client in writing of the reasons for the delay and the date by which the Department will act on the request; and
  - B. The Department will use only one such 30-calendar day extension.
- c. Prior to any decision to amend a health or medical record, the request and any related documentation shall be reviewed by the program's medical director, a licensed health care professional designated by the program administrator, or a Department staff person involved in the client's case. The Department will then proceed based on the recommendation made by the program's medical director or the licensed health care professional.

- d. Prior to any decision to amend any other information that is not a health or medical record, a Department staff person designated by the program administrator shall review the request and any related documentation. The Department will then proceed with the recommendations made by program administrators and program staff.
- e. The Department is not obligated to agree to an amendment and may deny the requests or limit its agreement to amend.
- f. If the Department grants the request, in whole or in part, the Department must:
  - A. Make the appropriate amendment to the information or records, and document the amendment in the client's file or record;
  - B. Provide timely notice to the client that the amendment has been accepted and updated pursuant to the time limitations in subsection 4.b.;
  - C. Seek the client's agreement to notify other relevant persons or entities, with whom the Department has shared or needs to share the amended information, of the amendment; and
  - D. Make reasonable efforts to inform, and to provide the amendment within a reasonable time to:
    - i. Persons named by the client as having received protected information and who thus need the amendment; and
    - ii. Persons, including business associates of the Department, that the Department knows have the protected information that is the subject of the amendment and that may have relied, or could foreseeably rely, on the information.
- g. The Department may deny the client's request for amendment if:
  - A. The Department finds the information to be accurate and complete;
  - B. The information was not created by the Department;
  - C. The information is not part of Department records; or
  - D. The information would not be available for inspection or access by the client, pursuant to Section 4 of this Policy.
- h. If the Department denies the requested amendment, in whole or in part, the Department must:
  - A. Provide the client with a timely written denial. The denial must:
    - i. Be sent or provided within the time limits specified in subsection 4.I.;
    - ii. State the basis for the denial, in plain language;
    - iii. Explain that if the client does not submit a written statement of disagreement, the client may ask that if the Department makes any future

disclosures of the relevant health information, the Department will also include a copy of the client's original request for amendment and a copy of the Department written denial;

- iv. Explain the client's right to submit a written statement disagreeing with the denial and how to file such a statement; and
  - v. Provide information on how the client may file a complaint with the Department, or with the U.S. Department of Health and Human Services (DHHS), Office for Civil Rights.
- B. If a client submits a written statement of disagreement with a denial of a request to amend health information:
- i. The Department will enter the written statement into the client's Department case file;
  - ii. The Department may also enter a Department written rebuttal of the client's written statement into the client's Department case record. The Department will send or provide a copy of any such written rebuttal to the client;
  - iii. The Department will include a copy of that statement, and of the written rebuttal by the Department if any, with any future disclosures of the relevant information.

## **6. Rights of clients to an accounting of disclosures of protected health information.**

An accounting is simply a list or a statement of all the times the Department has given health information to a program, entity or person. An accounting is only required for health information that is covered by HIPAA.

- a. Clients have the right to receive an accounting of certain types of disclosures of protected health information (PHI) that the Department has made for any period of time, not to exceed six years, preceding the date of requesting the accounting. This right does not apply to disclosures made prior to March 31, 2003.
- b. All requests for an accounting of disclosures will be made by having the client complete a [DHS 2096](#), "Request for Accounting of Disclosures."
- c. Department staff are responsible for tracking when health information is disclosed. Disclosures that are required to be tracked must be listed on [DHS 2097](#), "Disclosures of Protected Health Information." The accounting must include, for each disclosure:
  - A. The date of the disclosure;
  - B. The name, and address if known, of the person or entity who received the disclosed information;
  - C. A brief description of the information disclosed; and

D. A brief statement of the purpose of the disclosure that reasonably informs the client of the basis for the disclosure, or, in lieu of such statement, a copy of the client's written request for a disclosure, if any.

d. The uses or disclosures for the following purposes must be tracked:

A. Abuse Report: If DHS staff (other than protective services staff who respond to an abuse report) provides PHI about an individual pursuant to mandatory abuse reporting laws, the disclosure should be tracked. State child abuse reporting laws protect the identity of an abuse reporter so the accounting should not identify the DHS staff person who made the report.

B. Audit Review: When Department staff use PHI from an individual's record in relation to an audit or review (whether financial or quality of care or other audit or review) of a provider or contractor, the use should be tracked.

Also, when the Department provides client medical records or medical claims payment records to the Secretary of State, Medicaid Fraud Unit or the Centers for Medicare and Medicaid Services, or their representatives, this use should be tracked.

C. Health and Safety: If the Department discloses PHI about an individual provided to avert a serious threat to health or safety of a person, the disclosure should be tracked. For example, when the Department issues a notice under its Unauthorized Patient Leave Communications policy (**DHS Policy DHS-120-002**), the disclosure should be tracked.

D. DHS as a Provider: When the Department is responsible for operating or providing direct health care services, such as the state-operated group homes, the Department may provide individual's records in relation to licensing or regulation or certification by a different component of DHS, state or federal auditor, or a state or federal reviewer. The Department should track its disclosures to entities with oversight over the Department's provision of direct health care services.

E. Legal Proceeding: DHS should track any time that PHI about an individual is disclosed pursuant to a court order in a court case or other legal proceeding include a copy of the court order with the accounting.

F. Law Enforcement Official/Court Order: If PHI about an individual is provided to a law enforcement official pursuant to a court order include a copy of the court order with the accounting.

G. Law Enforcement Official/Deceased: If the Department provides PHI to law enforcement officials or medical examiner about a client who has died for the purpose of identifying the deceased person, determining cause of death, or as otherwise authorized by law, the disclosure should be tracked. The Department's accounting responsibility does not end when the person dies.

H. Law Enforcement Official/Warrant: The Department must track the disclosure of

- PHI provided to a law enforcement official in relation to a fleeing felon or for whom a warrant for their arrest has been issued and the law enforcement official has made proper request for the information, to the extent otherwise permitted by law.
- I. Media: Disclosure of protected health information about a client to the media (TV, newspaper, etc.) must be tracked, unless the disclosure is made within the scope of an authorization by the individual.
  - J. Public Health Official: When DHS staff (other than staff employed for public health functions) provides PHI about an individual to a public health official, such as the reporting of disease, injury, or in connection with the conduct of a public health study or investigation, the disclosure must be tracked.
  - K. Public Record: Identifiable information about individuals should generally not be disclosed in response to a public record request. However, in the unusual case where PHI about an individual is disclosed pursuant to a Public Record request without the individual's authorization, the disclosure must be tracked.
  - L. Research: The Department's internal analysis/studies conducted within health care programs that the client is a part of for purposes of health care operations need not be tracked. However, if the PHI will be used or disclosed for purposes of other department programs or for research purposes by other entities, PHI about an individual provided by the Department for purposes of research conducted without authorization, using a waiver of authorization approved by an IRB must be tracked. A copy of the research protocol should be kept with the accounting.
- e. Disclosures that are not required to be tracked and accounted for are those that are:
- A. Authorized by the client;
  - B. Made prior to the original effective date of this policy, which is March 31, 2003;
  - C. Made to carry out treatment, payment, and health care operations;
  - D. Made to the client;
  - E. Made to persons involved in the client's health care;
  - F. Made as part of a limited data set in accordance with the **DHS Policy DHS-100-07**, "De-identification of Client Information and Use of Limited Data Sets."
  - G. For national security or intelligence purposes;
  - H. Made to correctional institutions or law enforcement officials having lawful custody of an inmate.
- f. During the time period covered by the request, if the Department has made multiple disclosures to the same person or entity for the same purpose, or as a result of a single written authorization by the client, the Department need not list the same identical information for each subsequent disclosure to the same person or entity. The

Department may log the first disclosure made during the time period and add the frequency or number of disclosures made to the same person or entity and the last date of the disclosure made during the requested time period.

- g. The Department must act on the client's request for an accounting no later than 60 calendar days after receiving the request, except that if unable to provide the accounting within 60 calendar days after receiving the request, the Department may extend this requirement by another 30 calendar days. The Department must provide the client with a written statement of the reasons for the delay within the original 60-calendar day limit, and inform the client of the date by which the Department will provide the accounting. The Department will use only one such 30-calendar day extension.

If review of the file shows that records may have been provided to or maintained by, one of the Department's business associates, the Department should contact the business associate and request a list of disclosures. The additional information provided by the business associate must be included with the Department's accounting. Business associates include AAAs, the Office of Administrative Hearings, the Department of Justice, and other entities engaged in department matters.

- h. Fees: The Department must provide the first requested accounting in any 12-month period without charge. The Department may charge the client a reasonable cost-based fee for each additional accounting requested by the client within the 12-month period following the first request, provided that the Department:
  - A. Informs the client of the fee before proceeding with any such additional request; and
  - B. Allows the client an opportunity to withdraw or modify the request in order to avoid or reduce the fee.
- i. The Department must document and retain in the client's Department case record file, the information required to be included in an accounting of disclosures, as listed under subsection 6c of this policy, and send a copy of the written accounting provided to the client.
- j. The Department will temporarily suspend a client's right to receive an accounting of disclosures that the Department has made to a health oversight agency or to a law enforcement official, for a length of time specified by such agency or official, if the agency or official provides a written statement to the Department that such an accounting would be reasonably likely to impede their activities. However, if such agency or official makes an oral request, the Department will:
  - A. Document the oral request, including the identity of the agency or official making the request;
  - B. Temporarily suspend the client's right to an accounting of disclosures pursuant to the request; and
  - C. Limit the temporary suspension to no longer than 30 calendar days from the

date of the oral request, unless the agency or official submits a written request specifying a longer time period.

## **7. Rights of clients to file complaints regarding disclosure of information.**

- a. Clients have a right to submit a complaint if they believe that the Department has improperly used or disclosed their protected information, or if they have concerns about the privacy policies of the Department or concerns about Department compliance with such policies.
- b. Clients may file complaints with the Department, or (for protected health information) with the U.S. Department of Health and Human Services (DHHS) - the Office for Civil Rights (see subsection g of this section).
- c. The Department will not intimidate, threaten, coerce, discriminate against, or take any other form of retaliatory action against any person filing a complaint or inquiring about how to file a complaint.
- d. The Department does not require clients to waive their rights to file a complaint as a condition of providing of treatment, payment, enrollment in a health plan, or eligibility for benefits.
- e. The Department will designate staff to review and determine action on complaints filed with the Department. These designated staff will also perform these functions when the Department is contacted about complaints filed with the U.S. Department of Health and Human Services – the Office for Civil Rights.
- f. The Department will document, in the client's Department case file or record, all complaints, the findings from reviewing each complaint, and Department actions resulting from the complaint. This documentation shall include a description of corrective actions that the Department has taken, if any are necessary, or of why corrective actions are not needed, for each specific complaint.
- g. The Department must give clients the specific person or office and address of where to submit complaints:

State of Oregon Department of Human Services  
Governor's Advocacy Office  
500 Summer Street, NE, E17  
Salem, Oregon 97301-1097  
Phone: 1-800-442-5238  
Fax: 503-378-6532  
Email: [GAO.info@state.or.us](mailto:GAO.info@state.or.us)

U. S. Department of Health and Human Services, Office for Civil Rights  
Medical Privacy, Complaint Division  
200 Independence Avenue, SW  
Washington, D.C. 20201  
Toll free Phone: 877-696-6775  
Phone: 866-627-7748  
TTY: 886-788-4989  
Email: <mailto:OCRComplaint@hhs.gov>

### Form(s):

- [DHS 2090](#), "Notice of Privacy Practices"
- [DHS 2093](#), "Request for Access to Records"
- [DHS 2094](#), "Request for Amendment of Health Record"
- [DHS 2095](#), "Request for Restriction of Use and Disclosures"
- [DHS 2096](#), "Request for Accounting of Disclosures of Health Records"
- [DHS 2097](#), "Disclosures of Protected Health Information"(PHI)

### Policy(ies) that apply:

[DHS-100-007](#) De-identification of Client Information and Use of Limited Data Sets  
[DHS-120-002](#) Unauthorized Patient Leave Communications

### Reference(s):

- 45 CFR Part 164.522 – 164.528
- [Privacy/Security Glossary of Common Terms](#)

### Contacts

- Jane Alm, DHS Privacy Officer, [jane.alm@state.or.us](mailto:jane.alm@state.or.us)
- Privacy Program Office, (503) 945-5780

### Policy History

- **Version 2.0:**
  - 07/01/09: This policy originated in March 2003 in order to meet compliance with the federal HIPAA Privacy Rule. The 2009 revisions do not impact the policy's compliance with HIPAA. The revisions are implemented to improve clarity and to bring some of the language in line with other more familiar program-specific privacy language.
- **Version 1.0**
  - 03/31/2003 – Initial Release

 <p style="text-align: center;"><b>Select originating cluster</b></p>	<p><b>Information Memorandum Transmittal</b></p>
--	--

Jim Neely  
**Authorized Signature**

**Number:** CW-IM-09-019  
**Issue Date:** 08/17/2009

**Topic:** Protective Services

**Subject:** Release of the CF 307 Assessment to Parents.

**Applies to (check all that apply):**

- |   |  |
|---|--|
| <input type="checkbox"/> All DHS employees<br><input type="checkbox"/> Area Agencies on Aging<br><input checked="" type="checkbox"/> Children, Adults and Families<br><input type="checkbox"/> County DD Program Managers | <input type="checkbox"/> County Mental Health Directors<br><input type="checkbox"/> Health Services<br><input type="checkbox"/> Seniors and People with Disabilities<br><input type="checkbox"/> Other (please specify): |
|---|--|

**Message: Release of the CF 307 Assessment document to parents whose children are the subject of the assessment.**

**Each request for information must be considered uniquely from every other.** DHS places a high priority on transparency in practice and information sharing. Our decisions regarding release of DHS/CW information are intended to support what may be released, and based on the premise that transparency in our practice is generally both in the best interest of the child and supports the administration of child welfare services, or is necessary to investigate, prevent or treat child abuse or neglect.

Unless release of child abuse records and reports (CF 307) may cause harm to a child who is subject of the assessment, with exceptions noted below, DHS/CW will disclose the CF 307 to the parent at their request. Any decision made not to release CF 307 information based on potential harm to a child must be approved by the Child Welfare Program Manager or District Manager.

If the 307 contains confidential information such as protected medical information, alcohol and drug treatment information or criminal history regarding an individual other than the requestor, this information must be redacted. Additionally, if the 307 contains information about one parent or another individual which is not directly related to assessment of the abuse, this information must also be redacted.

The name, address and other identifying information about the person who made the report of abuse or neglect shall not be disclosed except to a law enforcement agency

**DAP - Appendix 7.d**

for purposes of investigating the report. Child abuse records disclosed under this provision must be kept confidential by the person to whom the disclosure is made.

*If you have any questions about this information, contact:*

<b>Contact(s):</b>	Kathy Steiner		
<b>Phone:</b>	503-945-6659	<b>Fax:</b>	503-373-7492
<b>E-mail:</b>	Kathy.Steiner@state.or.us		

<b>Policy Title:</b>	Confidentiality of Client Information – OAR		
<b>Policy Number:</b>	I-A.3.2 413-010-0000 thru 0075	<b>Version:</b>	<b>Effective Date:</b> 06/01/1999

Approved By: *on file*

Date Approved

Policy

Forms, etc.

Definitions

References

Contact

History

### Reference(s):

- ORS 419A.255
- Child Welfare Policy I-A.1, "Rights of Clients"  
[http://www.dhs.state.or.us/policy/childwelfare/manual\\_1/i-a1.pdf](http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-a1.pdf)
- PAM 9076-9077, "Confidentiality Matrix"

### Form(s) that apply:

- 2099, "Authorization for Use and Disclosure of Information"  
<http://dhsforms.hr.state.or.us/Forms/Served/DE2099.pdf>

### Policy:

#### **Purpose**

**413-010-0000**

The purpose of these rules is to describe the circumstances in which the Department may and may not *disclose client information* without a court order.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: ORS 419A.255, 409.225**

#### **Definitions**

**413-010-0010**

(1) "**Adult**" means a person who is 18 years of age or older.

(2) "**Child**" means a person who is under 18 years of age.

(3) "**Client**" means a person to whom the Department provides *Services* and includes children, parents, legal guardians, and legal custodians of unemancipated minor children who receive *Services*. Individuals who apply for and individuals who are granted certifications to operate foster homes are not *clients*. Adoptive parents are *clients* when:

## Appendix 7.e

(a) The Department has placed a child with them on a designated adoption basis;  
or

(b) They have signed a legal risk adoption agreement.

(4) "**Client File**" means a file that Child Welfare marks with the names of one or more *clients*, into which the Department places all of the named *clients' records*. A *client file* may contain *confidential information* about other *clients* and persons who are not *clients*.

(5) "**Client Information**" means *confidential information* about a *client* or identified with a *client*.

(6) "**Client Record**" means any "*record*," as defined in section (11) of this rule, which includes *client information* and is created by, requested by, or held by the Department. A *client record* does not include general information, policy statements, statistical reports or similar compilations of data, which are not identified with an individual child, family or other recipient of *Services*.

(7) "**Confidential Information**" means information that is unavailable to the public by statute, rule, or court order.

(8) "**Court Appointed Special Advocate (CASA)**" means a volunteer who is appointed by the court, is a party to the juvenile proceeding, and advocates for the child pursuant to ORS 419A.170.

(9) "**Disclose**" means reveal or provide *client information* to a person, agency, organization or other entity. Disclosing includes, but is not limited to:

(a) Showing or providing a *client record* or copy of a *client record*; and

(b) Orally transmitting *client information*.

(10) "**Legally Emancipated**" means a person under 18 years of age who is married or has been emancipated by the court in accordance with the requirements of ORS 419B.558.

(11) "**Record**" means a *record*, file, paper, or communication and includes but is not limited to any writing or *recording* of information including automated *records* and printouts, handwriting, typewriting, printing, photostating, photographing, magnetic tapes, videotapes or other documents.

(12) "**Service**" means assistance that the Department provides clients and includes, but is not limited to homemakers, intensive family *Service* workers, foster parents, child care centers, private child care agencies treatment centers, mental health professionals, volunteers, student interns, child protection teams, physicians and other health care providers, and Indian social *Service* and child welfare agencies.

(13) "**Voluntary Services**" means *Services* that the Department provides at the request of a person or persons and there is no open and related juvenile court proceeding.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: ORS 419A.255, 419A.170 and 409.225**

**Protection of information  
413-010-0030**

In the interest of family privacy and to protect children, families and other recipients of *Services*, except as provided by Oregon statutes and these rules:

(1) *Client information* is confidential.

(2) *Client records* are not available for public inspection.

(3) Oregon statutes and these rules regulate the Department's disclosure of *client information* by prohibiting disclosure of some *client information*, mandating disclosure of some information, and giving the Department discretion to *disclose* some information, as summarized below:

(a) Summary of some "prohibited disclosures", See OAR 413-010-0035, generally, which includes but is not limited to:

(A) Information compiled for criminal law enforcement purposes, See OAR 413-010-0035,(3);

(B) Alcohol and drug abuse treatment *records*. See OAR 413-010-0035(6);

(C) Information in *records* sealed by a court order of expunction, See OAR 413-10-0035(7);

(D) Adoption *records*. See OAR 413-010-0035(8);

(E) Adoption assistance *records*. See OAR 413-010-0035(9);

(F) Information identifying a person who reported suspected child abuse. See OAR 413-010-0035(10);

(G) *Records* and reports of child abuse. See OAR 413-010-0035(11); and

(H) Juvenile court *records*. See OAR 413-010-0035(121).

(b) Summary of some "mandatory disclosures", See OAR 413-010-0045 which includes but is not limited to:

(A) A *client* 18 years or older, See OAR 413-010-0045(2)(a);

(B) A parent or guardian of a child receiving voluntary *Services*, See OAR 413-010-0045(2)(b);

(C) A juvenile or tribal court. See OAR 413-010-0045(2)(d);

(D) A child's attorney in a juvenile proceeding. See OAR 413-010-0045(2)(e);

(E) A parent or guardian of a child provided *Services* in certain

## Appendix 7.e

circumstances. See OAR 413-010-0045(2)(b),(c); and

(F) A *Court Appointed Special Advocate (CASA)*. See OAR 413-010-0045(4).

(c) Summary of some “mandatory disclosures if it is in the child’s best interest.” See OAR 413-010-0055, generally, which includes but is not limited to:

(A) DHR employees as needed to perform their duties and provide *Services* to the child or family, See OAR 413-010-0055(1)(a); and

(B) Persons providing *Services* to the family to the extent necessary to provide those *Services* described in OAR 413-010-055(1)(c).

(d) Summary of some “discretionary disclosures”. See OAR 413-010-0065 generally, which includes but is not limited to:

(A) The Department and other state employees for audits, program reviews, or quality control;

(B) Law enforcement or district attorney’s offices for child abuse assessments and investigations and proceedings connected with administering the child welfare laws. See OAR 413-010-0065(2)(b);

(C) The public if a child in the Department’s custody has been abducted or is believed abducted. See OAR 413-010-0065(2)(c);

(D) General information, policy statements, statistical reports or similar compilations not identified with a *client*. See OAR 413-010-0065(3);

(E) *Adult’s* presumed waiver of confidentiality. See OAR 413-010-0065(4);

(F) Review of Child Welfare *records* for research purposes. See OAR 413-010-0065(5); and

(G) Investigation of Other Crime. See OAR 413-010-0065(6).

**Statutory Authority: ORS 418.005, 418.340**

**Stats. Implemented: ORS 7.211, 409.225, 419A.255, 419A.260, 419B.035, 430.763, 432.420**

### Prohibited disclosures 413-010-0035

(1) If a court order or a specific statute requires the Department to *disclose* information that this rule protects, the Department shall *disclose* the information.

(2) The Department shall not *disclose client information*:

(a) For purposes not directly connected with the administration of child welfare laws; or

(b) When disclosure is neither required nor authorized by:

## Appendix 7.e

(A) ORS 419B.035 (governing confidentiality of child abuse *records*), set out below in OAR 413-010-0035(11);

(B) ORS 419A.255 (governing confidentiality of juvenile court *records*) set out below in OAR 413-010-0035(12);

(C) The information is protected by other law.

(3) The Department shall not *disclose* investigatory information compiled for criminal law purposes, including the *record* of an arrest or a report of a crime, unless law enforcement explicitly authorizes the Department to *disclose* such information.

(4) The Department's employees shall not *disclose* the information described in section (3) of this rule unless authorized to do so by the branch manager or designee.

(5) A person authorized to review *client records* may not review the complete case file if the complete file contains *confidential information* about other persons, including, but not limited to other *client's*, ex-spouses, battering partners, housemates, and half-siblings unless the other person provides written consent that meets the requirements of OAR 413-010-0045(2)(a).

(6) The Department shall not *disclose* the *records* of a patient at a drug and alcohol abuse treatment facility to any person without the consent of the patient.

(7) The Department shall not *disclose client information* contained in a *record* sealed by a court order of expunction or any part of the expunged *record*.

(8) Disclosure of Adoption *Records*:

(a) The Department shall neither *disclose* nor release identifying information to anyone regarding the birth parents of a child who is placed for adoption. It is the intent of this rule to protect from release any information about a child placed for adoption that will link the child to the birth family or the birth family to the child. The whereabouts and new identity of a child shall not be revealed to anyone seeking information about the child by his or her birth name, except as otherwise provided by law;

(b) Identifying information from adoption files may be given to an *adult* adoptee or *adult* genetic sibling (age 21 or older) and to a birth parent when they have met the legal requirements of the Voluntary Adoption Registry as specified in ORS 109.425 to 109.507 and OAR 413-130-0300 to 413-130-0360;

(c) When an adoption is finalized, the *records* must be sealed and may be opened only pursuant to a court order. Only the Department central office adoption staff shall have access to the files. The adoption manager or designee may approve the release of non-identifying information from the files to the child or to the adoptive parents or their designee to provide information about the child's early history or familial history;

(d) The Department shall not *disclose* information about adoptive placements.

(9) Disclosure of Adoption Assistance *Records*:

## Appendix 7.e

**(a)** *Records* and information obtained or created by the Department for the purposes of determining eligibility or making payment for adoption assistance are confidential. Only the Department central office adoption staff shall have access to the files. The Department shall not use or *disclose* the information except for purposes directly connected with the administration of the adoption assistance program (42 USC 671(a)(8));

**(b)** Notwithstanding subsection (1) of this rule, use and disclosure of adoption *records* are governed by ORS 7.211, 432.420.

**(10)** Reporter of Abuse. The identity of the person(s) making a report of suspected child abuse, and any identifying information about the reporting person(s), shall be removed from the *records* or shielded from view before *records* are viewed or copied. The name, address or other identifying information shall only be *disclosed* to a law enforcement officer or district attorney in order to complete an investigation report of child abuse.

**(11)** Reports and *Records* Compiled Pursuant to the Child Abuse Reporting Law:

**(a)** Each report of suspected child abuse shall be immediately reported to a law enforcement agency;

**(b)** Child Welfare shall assist in the protection of a child who is believed to have been abused or neglected by providing information as needed to:

**(A)** The juvenile court;

**(B)** The district attorney;

**(C)** Any law enforcement agency or a child abuse registry in another state investigating a child abuse report;

**(D)** Members of a child protection team or consultants involved in assessing whether or not abuse occurred and determining appropriate treatment for the child and family;

**(E)** A physician who is examining a child or providing care or treatment, and needs information about the child's history of abuse; and

**(F)** A non-abusing parent, foster parent or other non-abusing person responsible for the care of the child.

**(c)** A report, *record*, or findings of an assessment of child abuse shall not be *disclosed* until the assessment is completed, except for the reasons stated in subsections (e)(A) and (B) of this rule. An assessment will not be considered completed while either a protective *Service* assessment or a related criminal investigation is in process. Child Welfare is responsible for determining when the protective *Service* assessment is completed. The district attorney determines when a criminal investigation is completed.

**(d)** *Records* or findings of completed child abuse assessments shall be released upon request to the following:

## Appendix 7.e

(A) Attorneys of *record* for the child or child's parent or guardian in a juvenile court proceeding for use in that proceeding; and

(B) A citizen review board established by Child Welfare or by a juvenile court to review the status of children under the jurisdiction of the court for the purpose of completing a case review. Before providing information to a citizen review board, Child Welfare shall assure that the board has informed participants of their statutory responsibility to keep the information confidential, and will maintain *records* in an official, confidential file.

(e) *Records* or information from *records* of abuse and neglect assessments may be *disclosed* to other interested parties if the Department determines that disclosure to a person or organization is necessary to:

(A) Administer child welfare *Services* and is in the best interests of the affected child. When disclosure is made for the administration of child welfare *Services*, the Department will release only the information necessary to serve its purpose; and

(B) Prevent abuse and neglect, to assess reports of abuse and neglect or to protect children from further abuse or neglect.

(12) Juvenile Court *Records* in the Department files:

(a) The juvenile court's "*record of the case*" is the "legal file", which includes the summons, other process, the petition, all papers in the nature of pleadings, motions, orders of the court and other papers filed with the court;

(b) The legal file is confidential and unavailable for public inspection, but is open to inspection by the child's parent, guardian, *court appointed special advocate*, surrogate, intervenor under ORS 109.119(1) and their attorneys;

(c) The juvenile court's social file includes reports and other material relating to the child's history and prognosis;

(d) The social file shall, except at the request of the child, not be *disclosed* directly or indirectly to anyone other than the juvenile judge and staff acting under the judge's direction, *Service* providers in the case, and the attorneys of *record* for the child or the child's parent, guardian, *court appointed special advocate*, surrogate or intervenor under ORS 109.119(1);

(e) No information in the legal and social files may be *disclosed* to any other person not described in subsections(2) and (4) of this rule without the consent of the court, except:

(A) For evaluating the child's eligibility for special education under ORS Chapter 343; or

(B) In connection with a proceeding in another juvenile court concerning the child.

## Appendix 7.e

(f) The following information in the juvenile court's file is not confidential and must be *disclosed* upon request:

(A) The name and date of birth of the child;

(B) The basis for the juvenile court's jurisdiction over the child;

(C) The date, time and place of any juvenile court proceeding in which the child is involved.

**Statutory Authority: ORS 418.005, 418.340**

**Stats Implemented: ORS 7.211, 409.225, 419A.102, 419A.255, 419A.2623, 419B.035, 430.763, 432.420**

### Mandatory disclosure 413-010-0045

(1) The Department shall *disclose client information* if disclosure is required by ORS 419A.255 or ORS 419B.035.

(2) Unless a *client record* is exempt from disclosure under the Public Records Law, ORS Chapter 192, the Department shall *disclose* the *client record* in the circumstances described below:

(a) If the *client* is 18 years or older or *legally emancipated*, the Department shall *disclose*, upon request:

(A) The *client's records* to the *client* if no court order prohibits the disclosure; or

(B) The *client's records* to a third party if no court order prohibits the disclosure and the *client* has authorized the Department in writing to *disclose* the *records* to the third party.

(b) Upon the request of a child's parent or legal guardian, the Department shall *disclose* a child's *client records* to the parent or legal guardian if the child is receiving voluntary DHS Services;

(c) Upon the request of a child's parent or legal guardian, the Department shall *disclose* a child's *client records* to the parent or legal guardian if the child is or has been in the Department's custody except:

(A) If the child objects;

(B) Disclosure would be contrary to the best interests of any child; or

(C) Disclosure could be harmful to the person caring for the child, which includes, but is not limited to, foster parents, treatment providers and relatives other than the child's parent or legal guardian.

(d) The Department shall *disclose* a child's *client record* to the juvenile court in juvenile proceedings, including tribal proceedings regarding the child;

## Appendix 7.e

(e) The Department shall *disclose* a child's *client records* to an attorney who identifies himself or herself as the child's attorney if the juvenile court confirms that he or she is the attorney of *record* in a juvenile proceeding.

(3) Information related to Child Welfare's activities and responsibilities in child abuse or neglect cases. Upon request, the Director or the Director's designee shall review the information related to Child Welfare activities and responsibilities:

(a) When child abuse or neglect causes the death or near death of a child or an *adult* is charged with a crime related to child abuse or neglect; and

(b) Unless the information is exempt from disclosure under other law, the Director or the Director's designee shall determine an appropriate time for disclosing the information and that determination shall depend on, among other things, the status of any child abuse or criminal investigations and the privacy interests of the victims.

(4) Disclosure to *Court Appointed Special Advocate (CASA)*:

(a) Access to information. Upon presentation of the order of appointment by the court, a *CASA*, without the consent of the child or children or parents, may inspect and copy any *records* relating to the child or children involved in the case held by the following entities:

(A) DHS, the state courts, and any other agency, office or department of the state; and

(B) Hospital, school organization, division, doctor, nurse or other health care provider, psychologist, psychiatrist, police department or mental health clinic.

(b) All *records* and information acquired or reviewed by a *CASA* during the course of official duties are confidential;

(c) When a *CASA* is also the guardian ad litem pursuant to federal law, this rule governs the guardian ad litem's access to information.

(5) If, in the professional judgment of the caseworker, information about a child indicates that the child presents a clear and immediate danger to another person or entity, the Department shall *disclose* the information to the appropriate authority and to the person or entity in danger. The decision to release information in these circumstances will be made in consultation with a supervisor.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: ORS Chapter 192, 409.225, 419A.170, 419B.035**

### **Mandatory disclosure if in the child's best interest 413-010-0055**

(1) Unless *client information* is exempt from disclosure under another provision of law, and if disclosure is in the child's best interest, the Department shall *disclose* the *client information records* to the following persons:

## Appendix 7.e

(a) Employees of the Department of Human *Services* to the extent necessary to perform their official duties, determine the child's or family's eligibility for *Services*, or provide *Services* to the child or family;

(b) The Support Enforcement Division, when information is needed in order to locate children or absent parents, and to establish support for children in substitute care; and

(c) Treatment providers, foster parents, adoptive parents, school officials or other persons providing *Services* to the child or family to the extent that such disclosure is necessary to provide *Services* to the child or family:

(A) Such *Services* include, but are not limited to, those provided by homemakers, intensive family *Service* workers, foster parents, child care centers, private child carrying agencies, treatment centers, Indian social *Service* or child welfare agencies, physicians and other health care providers, mental health professionals, volunteers, student interns, child protection teams.

(2) Sensitive Review Committee. Unless *client information* is exempt from disclosure under ORS Chapter 192 or another provision of law, and if disclosure is in the child's best interest, the Director or the Director's designee shall direct disclosure of relevant *client information* to persons appointed to a sensitive review committee convened by the Director to determine whether the Department acted appropriately and made recommendations to the Department regarding policy and practice.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: ORS 409.225**

### Discretionary disclosure

**413-010-0065**

(1) The Department may *disclose client information* when disclosure is required or authorized by:

(a) ORS 491B.035 (governing confidentiality of child abuse reports and *records*), set out in OAR 413-010-0035(11); or

(b) ORS 419A.255 (governing confidentiality of juvenile court *records*) set out in OAR 413-010-0035(12).

(2) The Department may *disclose client information* for purposes directly connected with the administration of child welfare laws including, but not limited to:

(a) Disclosure to employees of the Secretary of State's Office, the Department of Administrative *Services*, the Department of Health and Human *Services*, and DHS who require information to complete audits, program reviews and quality control;

(b) Disclosure to law enforcement officers and district attorneys' offices needing information for child abuse assessments, criminal investigations, civil and criminal proceedings connected with administering the agency's child welfare programs; and

(c) Disclosure to the public if a child in the Department's legal custody has been abducted or is missing and believed to be abducted, and is in danger of harm or a threat

## Appendix 7.e

to the welfare of others. The Department may *disclose* limited information to the extent necessary to identify, locate, or apprehend the child, including the child's name, description, and that the child may pose a threat to the public or himself or herself.

**(3)** The Department may *disclose* general information including, but not limited to policy statements, statistical reports or similar compilations of data which are not identified with an individual child, family or other recipient of *Services*, unless protected by other provisions of law.

**(4)** Presumed waiver of protection of ORS 409.225(1). The Department may *disclose* the information described in section (4)(f) of this rule if the Director or the Director's designee determines that all of the following circumstances are present:

**(a)** An *adult client* is the subject of *client information* made confidential by ORS 409.225(1);

**(b)** The Public *Records* Law does not exempt the information from disclosure;

**(c)** The *adult client* has publicly revealed or caused to be revealed any significant part of the *confidential information* and thus is presumed to have voluntarily waived the confidentiality protection of ORS 409.225(1);

**(d)** Disclosure is in the best interest of the child; and

**(e)** Disclosure is necessary to the administration of the child welfare laws;

**(f)** If disclosure is authorized, the Department may *disclose* the following: information about the person making or causing the public disclosure, not already *disclosed*, but related to the information made public.

**(5)** Review of the Department's *records* for research purposes. The Director or the Director's designee may authorize a person or organization to review the Department's *records* for research purposes. The Department may not approve the request until the researcher has agreed, in writing, to maintain the confidentiality of individual *clients*, not to copy DHS *records*, and not to include identifying information about any *client* in the report(s) of the research.

**(6)** Investigation of Other Crime:

**(a)** Except as authorized by OAR 413-010-0065(2)(b), and ORS 409.225, DHS employees shall not *disclose* to law enforcement *client information* obtained from *client records*, conversations with *clients* or other sources if the employee(s) acquired the information because a person is or has been a Child Welfare *client* of the agency;

**(b)** A manager or the manager's designee may *disclose* to law enforcement a *client's* current address when:

**(A)** The law enforcement officer provides the name and social security number of the *client*; and

**(B)** The officer satisfactorily demonstrates that the *client* is a fugitive felon (as defined by the state), the location or apprehension of such felon is within the law officer's official duties, and the request is made in the proper exercise of

those duties.

**Statutory Authority: ORS 418.005, 419B.035**

**Stats Implemented: ORS 409.225, 409B.230, 419A.225, 419B.035**

**Disclosure of information exempt under the public *records* law  
413-010-0068**

Unless required by court order or specific statute, the Department shall not *disclose* information in a *client file* if the information is exempt under the Public Records Law.

**Statutory Authority: ORS 418.005**

**Statutes Implemented: ORS 418.005**

**Disclosure procedures  
413-010-0075**

(1) The manager or the manager's designee shall supervise access to *records*.

(2) The manager or manager's designee must approve in writing to the disclosure or redisclosure of *client information* in the following circumstances:

(a) The Department currently is the child's legal custodian or guardian or the Department was the child's legal custodian or guardian when the Department authorized *Services*;

(b) The Department currently is serving the child pursuant to an Interstate Compact or other interstate agreement; and

(c) The child is or was evaluated or provided *Services* in conjunction with an Child Welfare assessment following a protective *Service* report, regardless of the child's legal status at the time.

(3) The Department may require a reasonable period of time to prepare a *client's record* for review at the branch or disclosure by mail.

(4) The Department may require that a person who seeks to review *client records*, review the *records* at an appointed time.

(5) Except as provided in OAR 413-010-0065(5), (access to *records* for research purposes), a person authorized to review the Department's *record* may copy the *record*.

(6) Any *record disclosed* shall be kept confidential by the person to whom the *record* is *disclosed* and shall be used only for the purpose for which disclosure was made.

(7) To redisclose lawfully, the person must obtain, before the redisclosure, the written consent of the branch manager or the branch manager's designee.

(8) All social *Service* agencies, courts, foster parents, *Service* providers (including medical providers), or agents of the Department providing *Services* to a DHS *client* at the request of the agency are subject to the Oregon statutes and DHS rules governing disclosure of *client information*.

(9) The Department shall not permit a person authorized to review a particular *client's*

## Appendix 7.e

*file* to review the complete file if the file includes information about any other *client*. The Department shall permit review of the particular *client's records*.

(10) When copies of *confidential information* are released, the material must be stamped: "Confidential not to be redisclosed".

(11) When confidential *records* and information are part of the *record* in an administrative hearing before DHS, DHS and all participants in the hearing shall take all reasonable measures to maintain the confidentiality of the information.

**Statutory Authority: ORS 418.005, 419B.035**

**Stats Implemented: ORS 418.005, 419A.255**

### Contact(s):

- **Name:** CAF Reception; **Phone:** 503-945-5600

### Policy History

- 12/29/1995

State of Oregon Department of Human Services  
Oregon Commission on Children and Families  
Oregon Court Appointed Special Advocate Directors Network

**Memorandum of Understanding**

This Memorandum of Understanding (MOU) among the State of Oregon Department of Human Services (**DHS**), the Oregon Commission on Children and Families (**OCCF**) and the Oregon Court Appointed Special Advocate Directors Network (**OCDN**) was developed jointly and shall become effective on the date at which all parties have signed.

This Memorandum of Understanding between DHS, OCCF and OCDN reflects agreed upon statewide guidelines for the working relationship of DHS Service Delivery Area (SDA) Managers and Court Appointed Special Advocate (CASA) Directors, as well as DHS child welfare workers and local CASAs. DHS child welfare workers operate within state and federal laws and the policies of DHS. The CASAs work within state and federal laws and the policies of local CASA programs, with the oversight of the Oregon Commission on Children and Families and in compliance with national CASA standards. Local CASA Programs work together as the Oregon CASA Directors Network.

By signing this Memorandum of Understanding, DHS, OCCF and OCDN acknowledge the urgency and importance of effective and efficient advocacy and service to children and families in Oregon. DHS will provide assistance to local DHS offices, and OCCF and OCDN will provide assistance to local CASA programs, to negotiate local agreements guided by this Memorandum of Understanding.

**Department of Human Services:**

*Ramona L. Foley* \_\_\_\_\_ 3-2-06  
Ramona L. Foley Assistant Director Date

**Oregon Commission on Children and Families:**

*Mickey Lansing* \_\_\_\_\_ 3-3-06  
Mickey Lansing Executive Director Date

**Oregon Court Appointed Special Advocate Directors Network:**

*Donna J. Bowman* \_\_\_\_\_ 3-9-06  
Donna Bowman President Date

## **Mission Statements:**

DHS: Helping people to become independent, healthy and safe.

OCDN: To strengthen the ability of each CASA program in Oregon to advocate for safe permanent homes for abused and neglected children.

OCCF: A partnership of citizens and professionals working together to improve the lives of children and families in Oregon's local communities. OCCF facilitates and supports local, coordinated, comprehensive planning for all children and families, promotes system integration, and provides leadership for local and state efforts focused on early childhood.

## **SECTION 1: ROLES AND RESPONSIBILITIES**

### **A. Partnership Roles and responsibilities of SDA Managers (or designees) and CASA Directors (or designees)**

1. The SDA Manager and CASA Director will model and foster a partnership that promotes mutual respect.
2. The SDA Manager and CASA Director will negotiate local agreements within the parameters of this MOU and ensure their implementation.
  - a. The SDA Manager and CASA Director will develop, model and foster effective communication strategies;
  - b. The SDA Manager and CASA Director will develop, model and foster effective conflict resolution strategies; and
  - c. The SDA Manager and CASA Director will ensure that training on roles and responsibilities of each is provided to new and current child welfare staff and CASA volunteers and staff.
3. The SDA Manager and CASA Director will establish and maintain regular (at least quarterly) contact in order to discuss specific and systematic program issues.
4. Local agreements will include a working definition of "timely" that meets the needs of both programs.

## **B. Roles and responsibilities of the CASA**

1. A CASA is a legal party to the juvenile dependency case in which the CASA is appointed by the Court. Pursuant to ORS 419A.170, it is the responsibility of the CASA to:
  - a. Investigate all relevant information about the case;
  - b. Advocate for the best interests of the child, ensuring all relevant facts are brought before the court;
  - c. Facilitate and negotiate to ensure that the court, DHS, and the child's attorney, if any, fulfill their obligations to the child in a timely fashion; and
  - d. Monitor all court orders to ensure compliance and to bring to the court's attention any change in circumstances that may require a modification of the court's order.
  
2. The child welfare caseworker can expect that a CASA will:
  - a. Contact the child regularly as appropriate to the case;
  - b. Provide consistent advocacy for the child from case assignment until the court vacates the CASA appointment. The goal is to provide one CASA from initial assignment to closure of the case;
  - c. Monitor educational, health, mental health, developmental and dental needs, assessments and treatment implementation;
  - d. Recommend appropriate services for the child or family, but not provide the service;
  - e. Monitor changes in the child's placements;
  - f. Attend/participate in all court proceedings regarding the child (hearings, dispositions, CRBs, etc.);
  - g. Attend/participate in other agency meetings regarding the child as appropriate;
  - h. Advocate for but not provide transportation for the child or family;
  - i. Recommend and monitor appropriate visits between the child and the parent(s), and other appropriate persons but not supervise the visits; and
  - j. Make written reports and recommendations to the court.

## **C. Roles and Responsibilities of the Child Welfare Caseworker**

1. DHS has the primary responsibility for providing services for children in the care of DHS, which includes the responsibility to:

- a. Assess safety threats to children;
  - b. Develop and implement plans for safety, permanency and well being;
  - c. Provide and obtain timely and appropriate services for the child and family;
  - d. Recommend court appointment of a CASA, when appropriate.
2. CASAs can expect that a child welfare caseworker will provide the following casework services:
- a. Contact child regularly, according to policy;
  - b. Receive and assess allegations of child abuse;
  - c. Develop safety plans including maintaining children safely with their families, placement of children in substitute care.
  - d. Engage families in decision-making meetings to identify children's needs, family strengths and appropriate services;
  - e. Develop, record and implement case plan and concurrent case plan; and
  - f. Obtain and provide appropriate services for the child or family to meet the child's safety, permanency and well being needs;
  - g. Develop a visitation plan appropriate to the safety and attachment needs of the child;
  - h. Assess and monitor educational, health, mental health, and dental needs of the child;
  - i. Monitor child's placements;
  - j. Attend/participate in other agency meetings regarding the child as appropriate; and
  - k. Make written reports and recommendations to the court.

## **SECTION 2: COMMUNICATION**

### **A. Initial and on-going communication between the CASA and the child welfare caseworker**

1. After the CASA is appointed to a case they will make an appointment to meet the caseworker. The caseworker must meet with the CASA as soon as possible. At that meeting the CASA and the child welfare caseworker will:

- a. Agree on a communication plan including e-mail/phone/fax preferences, long or short messages, and exchange of usual and emergency contact information;
  - b. Review the case including the case history, the case plan, the permanency plan and the concurrent plan; and
  - c. Discuss how the CASA and child welfare caseworker can work together to achieve safety, permanency and well being for the child(ren).
2. Throughout the case the child welfare caseworker and the CASA will provide frequent updates and return e-mail/phone/fax within 48 hours.
  3. The child welfare caseworker and the CASA will share court reports prior to court presentations (meeting in person if possible) according to local court expectation.

### **SECTION 3: RECORDS ACCESS**

1. The effective work of the CASA depends on timely access to complete information. According to ORS 419A.170, the appointed CASA shall have access to information relating to the child from the child's file. The full record, with the exception of the reporter's identity, may be accessed by:
  - a. Authorization for use and disclosure of information;
  - b. Court order; or
  - c. Through the process of discovery.
2. DHS may not disclose to CASA information that identifies persons who have reported child abuse and neglect.
3. Both DHS employees and CASA employees/volunteers have statutory responsibilities to maintain the confidentiality of records under both state and federal law including ORS 419B.035, 419A.225, 409.225 ORS 419A.170, HIPAA and 42 CFR Part governing drug and alcohol treatment records.
4. The local agreement negotiated by the SDA Manager and CASA Director will address efficient access to child records that:
  - a. Provides initial access to the child's file to the CASAs at the DHS

- office within 24 hours, if possible, but not more than three (3) working days from the request;
- b. Allows CASAs sufficient space and time to read the file and make notes;
  - c. Allows CASAs access to files without constant supervision;
  - d. Allows DHS staff or the CASA to copy the portions of the file the CASA deems necessary, except for information relating to the identity of the reporter and other parts of the file that may not be open (see paragraphs 1 and 2 above);
5. The CASA, after reading or copying case files, will return the DHS file material in the same order as contained in record.
  6. CASAs or CASA programs will not be charged for copies.

#### **SECTION 4: HOME STUDY REPORT**

1. OAR 413-010-0081 establishes the procedures for the review of adoption home studies by the CASA for the child(ren).
2. Redactions are not necessary if the prospective adoptive family signs a release to allow the CASA to view the entire document.
3. The adoption home study will be modified (redacted) prior to the release to the CASA.
4. Redactions will be the information that is confidential by federal or state law:
  - a. Protected health information;
  - b. Mental health information;
  - c. Substance abuse information;
  - d. Criminal record check information.
5. Other redactions will be made, per OAR 413-010-0084(2), to ensure that the prospective adoptive family cannot be identified.
6. In some cases, a redaction may not protect the identity of a family, and a summary may be used.

## PROCEDURE

1. The caseworker shall notify the CASA that the Adoption Home Study Report has been selected for consideration by the adoption committee, as soon as practicable after its selection, but no later than 10 business days before the adoption committee meets.
2. The CASA must request a copy of the redacted report no later than seven days prior to the scheduled adoption committee. Local programs may have informal agreements to release reports without a request by the CASA.
3. The caseworker must submit the redacted Adoptive Home Study to the local CASA director no later than three business days before the adoption committee. Redactions, if necessary, must be completed by that date.
4. If another Adoptive Home Study is selected within ten days of the adoption committee meeting, the CASA will be informed, as soon as possible, and provided the redacted copy as requested.
5. The local CASA director or designee will retain the report at the CASA office for the CASA to review. The local CASA program director must retain the report or summary, keep it secure, and allow the child's CASA to review and take notes from the report at the office of the local CASA program.
6. The CASA director may not re-disclose any information contained in the report for any purpose other than discussing the needs of the child with DHS, the CASA's supervisor, the child's attorney, the court, the child's tribe or the adoption committee.
7. The CASA director or designee cannot make copies of the report and will shred or return the report to DHS pending the outcome of an adoption committee or appeal.

## **SECTION 5: NOTIFICATION**

1. The appointed CASA will receive timely notification of:
  - a. All DHS staff and family meetings relevant to the child;

- b. Sibling planning conferences;
  - c. Placement change of the child;
  - d. Current caretaker committee meetings; and
  - e. Adoption committee meetings.
2. Cancellations and rescheduling will be communicated immediately to the CASA or CASA program.
  3. The CASA will RSVP to meeting notifications in a timely fashion.

## **SECTION 6: ACCESS TO THE CHILD**

1. DHS will include in the pre-service training for foster and adoptive parents information about the CASA's role including their statutory authority and need to visit the child.
2. Both CASA and DHS will actively facilitate and support positive working relationships between biological parents, foster parents, and adoptive parents.
3. The CASA will have reasonable access to the child in the home, foster home, or other placements, including an adoptive placement.
4. The CASA may have private conversations with the child. These conversations may occur in the home, foster home, other placement, or in a public setting.
5. The CASA's appointment remains in effect until the Court vacates the appointment or the petition is dismissed. After the appointment is vacated there is no legal relationship between the CASA and the child and/or official contact with the child, the adoptive parent(s) or other parties.

## **SECTION 7: CONFLICT RESOLUTION**

1. DHS and OCDN expect that cooperative problem solving will occur. Both child welfare caseworkers and CASAs are supervised; supervisors will be utilized in conflict resolution when necessary.
2. The SDA Manager (or designee) and the CASA Director (or designee) will meet regularly and work together to address concerns.

3. The local agreement will address conflict resolution and will require:
  - a. Documentation of the concern, including the frequency, who is involved, whether the issues are based in policy, practice or personality, etc;
  - b. Direct communication between the persons involved in the concern;
  - c. Communication with the supervisor(s);
  - d. Development and implementation of a resolution strategy involving the individual(s) and the supervisor(s) before taking the issue to the next management level(s); and
  - e. That if a timely resolution cannot be reached at the local management level, or if the issue has ramifications beyond the local DHS office or program, the SDA manager will contact the Administrator-CAF Office of Safety and Permanency for Children (OSPC), and the CASA director will contact the CASA State Coordinator. The CASA State Coordinator and the CAF OSPC Administrator will work together with the local programs to address the issues.

## **SECTION 8: TRAINING**

1. Positive working relationships develop more effectively when each individual understands the roles and responsibilities of both the child welfare caseworkers and CASAs. The local agreements will include a clear reciprocal plan for training, which will include, but is not limited to the following:
  - a. Cross-training opportunities about CASA and Child Welfare Caseworker roles and responsibilities, MOU, mandates and policies.
 

Examples:

    - Foster/Adoptive Parent Training
    - In-service Training
    - Orientation/Pre-Service Training for Staff/Volunteers
  - b. Joint training sessions, on current issues and practice related to child neglect, and Alcohol and Drug, ICWA, ICPC, and Family Meetings. ( FDM, TDM, and OFDM)
 

Examples:

    - Invitations to In-Service Training
    - Community Training
    - Co-Developed Training

c. Opportunities for interaction between CASA and Child Welfare Caseworker/Staff

Examples:

- Ride Alongs
- Get Togethers/Brown Bags
- Work together on joint projects

## **GENERAL PROVISIONS**

1. Services to Culturally Diverse Children and Families: Providing equal access to and maximum benefit from services for children and youth who are members of culturally diverse groups is a priority for DHS, OCCF and OCDN. To request information, call Gloria Anderson at 503-945-7000.
2. Compliance with the Americans with Disabilities Act: This memorandum is available in alternate formats such as Braille, large print, audio tape, oral presentation, and computer disk. To request an alternate format call the State of Oregon Department of Human Services, Contracts and Procurement Unit at (503) 945-5818 or TTY (503) 945-5928.

## **CASA/MOU DEFINITIONS**

**CAF** (Children, Adults and Families): The DHS program area responsible for administering self-sufficiency and child-protective programs. These include JOBS, Temporary Assistance for Needy Families (TANF), Employment Related Day Care, Food Stamps, child-abuse investigation and intervention, foster care and adoptions.

**CASA** (Court Appointed Special Advocate): A volunteer who is appointed by the court, is a party to the juvenile proceeding, and is an advocate for the child pursuant to ORS 419A.170

**Child Welfare Manager:** A CAF manager or supervisor who supervises Child Welfare case workers and reports to an SDA Manager.

**Child Welfare Worker:** A CAF employee who works directly with clients and reports to a Child Welfare Manager or supervisor.

**Concurrent case plan:** A second plan developed by the Child Welfare caseworker in cases where the primary plan is return home that will be implemented to provide permanency for the child if the return home plan fails.

**CRB** (Citizen Review Board): Trained citizen volunteers who conduct case reviews of children and youth in substitute care to ensure that appropriate services and plans are in place.

**DHS** (Department of Human Services): Oregon State's health and human services agency. Established in 1971 as the Department of Human Resources, it changed to its current name in 1999.

**Legal Party to the Case:** A person with legal rights in a juvenile dependency case as outlined in ORS 419B.875 including the right to notice of court proceedings, copies of petitions, answers, motions and other court papers, the right to appear in court proceedings, the right participate in hearings and the right to request hearings. Parties to juvenile dependency cases also have the right to "discovery" as outlined in ORS 419B.881.

**ICPC** (Interstate Compact for Placement of Children): State law that governs the interstate placement of children, including the responsibilities

of “sending” and “receiving” states for a child who is under one state’s jurisdiction and physically placed in another state. See ORS 417.200 to 417.267.

**ICWA** (Indian Child Welfare Act): Federal law that prescribes specific legal and procedural requirements that must be observed when an “Indian child” is the subject of a child custody proceeding, including a juvenile dependency proceeding. See 25 USC §§1901 through 1934.

**SDA Manager:** A CAF manager responsible for oversight of a geographic area including a county or counties designated as a “Service Delivery Area” or “SDA” defined by region. Such managers also serve as legislative liaisons to the field office and report directly to the CAF Deputy Director.

**Family Meetings:** Facilitated meetings to address safety concerns and service planning. These meetings include family, DHS, DASA, and other significant community partners.

GENN7182.DOC

## DHS/CRB MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding between the State of Oregon Department of Human Services, Children Adult & Families Division, hereinafter referred to as DHS, and State of Oregon Judicial Department, Citizen Review Board, hereinafter referred to as CRB, begins upon execution of this Memorandum of Understanding by both parties and ends March 16, 2013.

By the signatures below of their authorized representatives, DHS and the CRB hereby jointly acknowledge the importance of effective and efficient review of service delivery to the children and families of Oregon in promoting improved outcomes. This Memorandum of Understanding describes protocols that CRB and DHS believe will further that goal.

### 1. DEFINITIONS

- 1.1 **Case Plan:** A written goal oriented, time limited individualized plan for the child and the child's family, developed by the Department and the parents or legal guardians, to achieve the child's safety, permanency and well being.
- 1.2 **Case Review (CRB review, Review):** A process by which local citizen review boards use the written Case Plan, and other supporting documents, and a scheduled meeting with parties to make the findings and recommendations required by ORS 419A.116 that are reported to the court, DHS and other parties. Case review by the CRB meets the requirements of "administrative review" under SEC. 475 of the Social Security Act and is the "case review system" described under the Act.
- 1.3 **Continuance:** A circumstance in which the case review is not concluded at the end of its regularly scheduled meeting. No written findings or recommendations are issued until after the conclusion of the case review, which is typically the following month. Subsequent review due dates will be generated from the date that the review began.
- 1.4 **Court Relief:** An option of the court when they have issued written findings required under ORS 419B476 or substantially the same findings under ORS 419A.116, that meet the criteria for periodic review.
- 1.5 **CRB:** A program of the Court Programs & Services Division in the State Court Administrator's Office of the Oregon Judicial Department responsible for establishing and supporting local citizen review boards pursuant to ORS 419A.090. The CRB program is the case review system, required by federal law, for the state of Oregon responsible for assuring periodic review. In the context of this memorandum, "CRB" may also refer to the local citizen review board that does the case review.
- 1.6 **DHS:** For the purpose of this memorandum, reference to DHS means the Children, Adult and Families Division specifically.

- 1.7 **Early Review:** A case review set prior to the next review due date to assess an aspect of the case that has a material effect on the permanency outcome in the Case Plan.
- 1.8 **Essential Party:** A person specifically named as entitled to notice of CRB reviews pursuant to ORS 419A.098 (3); and any other parties listed by the Department of Human Services (DHS) or listed in the Court order.
- 1.9 **Findings and Recommendations:** A written report required under ORS 419A.116 that addresses reasonable efforts, case compliance, parental progress, progress toward alleviating the need for placement, the need for and appropriateness of placement a likely date to return home, and other problems, solutions or alternatives.
- 1.10 **Interpreter:** A professional person, not employed by DHS or CRB, who provides oral transfer of meaning from one language to another for a party who is Limited English Proficient (LEP)
- 1.11 **Interested Party:** A person, other than essential or legal parties, who has some connection with or knowledge of the child and family situation as it relates to the case review.
- 1.12 **Legal Party:** Those parties with legal standing before the Juvenile Court.
- 1.13 **Next Review Due Date:** The date by which the next periodic review (Court or CRB) is required by federal law.
- 1.14 **Paper Move:** A process by which the branch requests the CRB to delay scheduling of the case review and hold the paper (Case Plan and supporting documents) because there is a scheduled court hearing that is expected to meet the requirements for periodic review and there is reason to believe the court will relieve the CRB of its responsibility to review.
- 1.15 **Request for Information:** A notice from CRB to DHS indicating the CRB has preliminarily scheduled a dependency case for case review, and requesting that DHS respond with the Case Plan and supporting documents or an explanation, with supporting documentation, that the review is not required by federal law.
- 1.16 **Substitute Care:** A child in the legal or physical custody and care of the Department, including those supervised by another agency and placed in a paid or unpaid out-of-home placement, including but not limited to foster or relative placements, group homes, permanent foster care, emergency shelters, residential facilities, non-finalized adoptive placements, subsidized independent living, accredited psychiatric facilities, secure adolescent inpatient programs and secure children's inpatient programs.

## 2 ISSUES OF GENERAL APPLICATION

- 2.1 CRB and DHS agree to meet no less than twice per year to address issues of mutual interest, such as successes, concerns, training needs, trends in child welfare, and advocacy opportunities.
- 2.2 DHS will assist the CRB, when requested, in recruitment of board volunteers by making recommendations of potential board members to CRB field staff whenever possible.
- 2.3 CRB and DHS will endeavor to address any future concerns or needs that may arise regarding the subject matter of this Memorandum of Understanding on an as-needed basis and at local levels, when appropriate. However, CRB and DHS acknowledge recommended or desired changes to protocols, even at local levels, must receive the approval necessary or required by the policies and practices of CRB and DHS policy before such changes are implemented.
- 2.4 CRB and DHS acknowledge that it is important to provide local courts with a balanced perspective regarding the processes by which CRB reviews are conducted. Therefore, CRB and DHS will each include the other as a participant in meetings with the local courts in which CRB Review policies and/or procedures are anticipated to be discussed.
- 2.5 CRB and DHS will share training they provide to staff and volunteers of their respective programs to promote understanding of practice and improve the review system.

## 3. BEFORE THE REVIEW

- 3.1 CRB and DHS agree that reviews will not be scheduled and will be set over to the following month by the CRB if the completed "Request for Information" (CRB Form 700) and current Case Plan are not received in the CRB office by 5 p.m. the 21<sup>st</sup> day prior to the scheduled review date.
- 3.2 21 days prior to any scheduled review, DHS will provide CRB a completed "Request for Information" for each matter to be reviewed. When DHS transmits to CRB each completed "Request for Information", DHS will include its recommendation of other interested parties, including any recommended by CRB.
- 3.3 CRB will provide written notice to parties listed on each completed "Request for Information" at least 15 days prior to the scheduled review.
- 3.4 If, after its receipt of a completed Request for Information, the CRB learns of a party requesting to be heard and who is not listed on the Request for Information, CRB will notify DHS of the party's request. CRB will consider hearing from interested parties not listed on the Request for Information as allowed by the Supreme Court Operating Rules for Local Citizen Review Boards.

- 3.5 CRB schedules initial reviews for a minimum of 40 minutes and subsequent reviews for a minimum of 25 minutes. If DHS believes a matter requires additional time for a review, it will indicate that belief on the Request for Information completed by DHS for that matter.
- 3.6 If DHS is aware of special circumstances at the time it transmits a completed Request for Information in a particular matter, DHS should include the information related to those circumstances at that time. If either CRB or DHS become aware of special circumstances with respect to a particular matter within 21 days of a scheduled review, each will alert the other of those circumstances by telephoning the appropriate person within CRB or DHS.
- 3.7 DHS will notify the CRB if an interpreter is needed on the Request for Information; CRB will arrange for an interpreter. If an interpreter is needed, but not requested by DHS, the board will continue the review until an interpreter can be scheduled.
- 3.8 If DHS intends to request court relief in a particular matter because the court hearing will be prior to the review due date, it will submit a request for a paper move with a completed Request for information and the current case plan 21 days prior to the scheduled CRB review.
- 3.9 DHS will submit to CRB the following material with the Request for Information and the current Case Plan, as available, to be received by the CRB no later than 21 days prior to each review:
  - 3.9.1 For matters receiving their first CRB review:
    - 3.9.1.1 Petitions and Court Orders
    - 3.9.1.2 Action Agreements and Family Support Service Agreements
    - 3.9.1.3 Assessments and/or evaluations (both children and parents)
    - 3.9.1.4 ICWA inquiry
    - 3.9.1.5 ICPC Report
    - 3.9.1.6 CASA report
    - 3.9.1.7 Service History
  - 3.9.2 For matters which have been previously reviewed:
    - 3.9.2.1 Any of the items listed above, as applicable, and created in the period under review.
    - 3.9.2.2 Additional material requested by the board at a previous review for which the need to review the material has been documented.

- 3.10 CRB and DHS acknowledge that parties may more fully and meaningfully participate in case reviews when they are provided the opportunity to review relevant materials prior to attending reviews in which they have an interest. To achieve that level of participation, DHS will send copies of the Case Plan to parents, parent's attorneys, child's attorneys and CASAs for receipt prior to the CRB review.
- 3.11 Due to confidentiality requirements, the CRB does not wish to receive information regarding the HIV status of parents and children; DHS agrees NOT to include this information in reports and other materials submitted to the board.

#### 4. AT THE REVIEW

- 4.1 DHS will attend scheduled CRB reviews. The case-carrying worker is expected to attend; if he/she cannot attend, a knowledgeable substitute worker or supervisor will attend. Supervisors may attend any review. If the case has another worker, such as an adoption worker, ICPC worker or courtesy worker, that worker should also participate in the review.
- 4.2 DHS agrees that workers will bring the current volume of the case file to the CRB review, if the file is available.
- 4.3 CRB will encourage an open forum while discussing and reviewing a case. If a party wishes to speak privately with the board, or provides written information to the board, or the board wishes to speak privately with the party, the CRB may consider that information in making a decision. In making a finding or recommendation, CRB will disclose the information upon which it relied as required by the CRB Program policy and procedure.
- 4.4 CRB will make the Findings and Recommendations verbally at the review when all parties are present, unless CRB, in its sole discretion, finds it impracticable.
- 4.5 CRB will identify those recommendations that are not within the authority or ability of DHS to implement and CRB agrees to direct issues of general concern (for example, resource needs) to the appropriate forum.
- 4.6 CRB and DHS acknowledge that the children and families whose cases are undergoing review will be best served by a joint effort by CRB and DHS to maintain the focus of the proceedings on issues germane to the achievement of the safety, well-being, and permanent plan for the children under review.
- 4.7 CRB agrees to grant continuances only under the following circumstances:
  - 4.7.1 The tribe with standing in the case was not notified.
  - 4.7.2 There is a need for an interpreter and one is not available.
  - 4.7.3 The board is unable to make its required findings.

- 4.8 CRB and DHS will make every effort to avoid the necessity for continuances.
- 4.9 CRB and DHS agree that the time of the parties to the case is valuable. As such the CRB will attempt to schedule early reviews only in the following circumstances:
  - 4.9.1 By order of the Juvenile Court
  - 4.9.2 Upon request by a person with legal standing in the case.
  - 4.9.3 Upon recommendation by the board, at a regularly scheduled review, when there is a material concern regarding the permanency outcome and there is cause to believe that an early review will advance the permanency plan. Such a request will be documented in the Findings and Recommendations document.
- 4.10 Before scheduling an early review under 4.9.2 or 4.9.3, CRB field staff will review the request with the DHS Supervisor to determine if the material concern has been addressed and whether an early review continues to be warranted.
- 4.11 CRB will not schedule early reviews to address the following:
  - 4.11.1 Issues pertaining to criminal charges pending or decided. These issues are to be resolved in the court.
  - 4.11.2 Issues pertaining to caseworker supervision issues. Boards are encouraged to resolve these issues by direct contact with the worker's supervisor.

## 5. AFTER THE REVIEW

When the CRB receives a written response from DHS to a CRB Finding or Recommendation, the board will discuss the response at its next regular meeting date. The DHS response, along with the action taken by the board, will be forwarded to the court, DHS, and interested parties within fourteen (14) days of the board's review of the response.

## 6. TITLE IV-E COST REPORTING

### 6.1 Purpose:

This Memorandum of Understanding establishes a procedure for CRB to report to DHS the CRB expenditures that qualify for Federal Financial Participation under Title IV-E. These CRB expenditures shall include costs associated with administering and conducting foster care administrative reviews and Title IV-E Training. DHS will include CRB's Title IV-E costs in DHS's cost allocation process.

### 6.2 CRB Responsibilities:

- 6.2.1 CRB will provide, to DHS's General Accounting Unit, quarterly reports on CRB's Title IV-E costs.
- 6.2.2 CRB will not report any expenditure that has been included in any other Federal reimbursement or matching funds claim.
- 6.2.3 CRB shall be responsible for repayment of any Title IV-E funds received by CRB that are the result of CRB Title IV-E costs disallowed as a direct result of a federal or state audit of CRB financial records.
- 6.2.4 CRB will report quarterly to DHS the number of DHS children reviewed.
- 6.3 DHS Responsibilities:
  - 6.3.1 DHS will include CRB's Title IV-E costs in DHS's cost allocation process. DHS's cost allocation process culminates in the filing of the Title IV-E-12 report to claim federal IV-E funds.
  - 6.3.2 DHS reserves the right to withhold the CRB related costs from the federal claim if and only if the CRB Title IV-E claim will result in a loss of the Title IV-B transfer authority. DHS shall notify CRB within five (5) days of DHS's receipt of information which could reasonably indicate that DHS would withhold CRB Title IV-E costs.
- 6.4 Joint Responsibilities:
  - 6.4.1 CRB and DHS will cooperate in identifying which CRB expenditures are allowable IV-E costs. (Some examples of costs that are not allowable IV-E costs are: any interest expenses; mass transit taxes; and, capital expenditures greater than \$5,000.)
  - 6.4.2 All funds realized by DHS, from claiming CRB allowable IV-E costs, will be transferred to CRB. CRB will treat the transaction as a "transfer in" for Department of Administration accounting purposes, and DHS will treat the transaction as a "transfer out" for accounting purposes. CRB will deposit such funds to the credit of the State of Oregon's General Funds.
  - 6.4.3 The Oregon Judicial Department, on behalf of CRB, and DHS agree to engage in subsequent discussions concerning possible uses of state general funds that may become available for allocation by the legislature or the legislative Emergency Board in the event that the Title IV-E funds being sought under this Memorandum of Understanding are received by CRB.

7. JOINT DEVELOPMENT OF ELECTRONIC INFORMATION SHARING SYSTEMS

- 7.1 CRB and DHS agree that collaboration in data sharing is paramount in improving permanency outcomes and is consistent with 1.1 of this agreement.
- 7.2 CRB and DHS agree to work collaboratively on planning and implementing changes in case management systems and electronic content management within their respective organizations and will work to ensure compatibility for sharing information.

The parties understand that this MOU is not legally binding on them. Rather, it is designed to reflect an understanding of the way in which they may successfully cooperate to provide effective and efficient case review of foster care in Oregon. Nothing in the MOU restricts any party from exercising independent judgment or discretion given it under applicable statutes, regulations, or other sources.

Reviewed by <sup>CAF</sup> DHS Contract Officer:  Date: 3-12-2009

AGREED: Citizen Review Board  
By:   
Date: 03/26/09  
Name: Alex Aikman  
Title: Director OJD Court Programs & Services Division

AGREED: Department of Human Services  
By:   
Date: 3-12-09  
Name: Erinn Kelley-Siel  
Title: Interim Director for Children Adults and Families, Department of Human Services

LDP:gll/L4G08017

## Summary and Guidance on Compliance With 42 CFR, Part 2 (Federal Regulations regarding Alcohol & Drug Records)

The Federal Alcohol and Drug Confidentiality law is 42 CFR, Part 2. The laws around A&D confidentiality are specific and more restrictive than HIPAA laws about regular health and medical records. For the most part 42 CFR is simple. Among other things, DHS child welfare MAY NOT forward protected alcohol and drug information to any other party's attorney solely for the purpose of discovery, unless that disclosure is authorized by the client or by court order. This has been confirmed in many discussions with CAF Attorney Generals (AGs). This law can slow things down a bit and make the process more cumbersome - but it's also been the foundation for people to participate successfully in treatment for over 30 years. We can get the information where it needs to be - with proper attention paid to the rights of all.

With regard to the attorneys representing DHS, the AG "works for us" and is our attorney. When a caseworker forwards DHS child welfare records to an AAG it is understood the records will be kept within the confines of internal communications and the attorney-client relationship and not be re-released for discovery, or any other purpose, without either a signed authorization or a court order. At that point the AAG is responsible for complying with the Federal law and, if necessary, the AAG may seek a court order that would require and authorize disclosure to other parties in the proceeding.

However, the local District Attorney or defense attorneys are NOT our attorneys and no DHS employee should be forwarding any protected A&D information to a DA without either a signed authorization (release) that clearly specifies the DA and the purpose of the release, or a signed court order. A subpoena IS NOT enough to share A&D treatment records. The DA may want all the A&D info but we MAY NOT forward the info. If they insist, refer them to an AAG. The AAG has expressed a strong willingness to have these conversations locally. Some things to keep in mind:

- 42 CFR supersedes HIPAA because it is more specific and restrictive in its coverage.
- 42 CFR forbids sharing of A&D treatment record info for discovery or based on a subpoena. A court order or signed authorization is required.
- 42 CFR is specifically about A&D treatment program records. It does not cover every piece of A&D information you have from family members or other parties in the case.
- Drug testing and results that DHS provides as a service, with DHS money, at a local collection site, not administered through a treatment program,

- are DHS records. Those drug tests ARE NOT covered by 42 CFR.
- Drug test results that A&D treatment programs provide are covered by 42 CFR.
  - No, you may not read a treatment file, re-summarize it and then forward the summary of protected information on with the file. The INFORMATION is protected, not just the information that is on treatment program letterhead. So the law about re-release applies to written and oral releases.

In cases where there is no client signed authorization and you really need information to move to key people to have the court understand the safety concerns of a case, you have to be clear with the court, without violating the law. The statement listed below is offered for written or verbal use to clarify the position you may find yourself in from time to time. The court then knows you haven't just made things up, but rather, you are legally prohibited from sharing. Then the court can decide to get the information via an order or not, or the DA can ask for a court order ahead of time. You may feel this is an unneeded, time consuming and frustrating extra step or two - but it is Federal law.

- ***"The decisions made, actions taken, and position presented to the court by DHS child welfare regarding the safety of this child(ren) have been made in part based on information that cannot be forwarded at this time in order to keep the department in compliance with Federal Law prohibiting the re-release of protected alcohol and drug information. The re-release of this information would require a signed authorization or court order in compliance with 42 CFR part 2, neither of which the department has at this time."***