

Cathy Cooper
Authorized Signature

Number: SPD-AR-10-046
Issue Date: 6/2/2010

Topic: Protective Services

Due Date: 6/2/2010

Subject: DHS confidentiality and guardian/conservator proceedings, ORS 125.012

Applies to (check all that apply):

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

Action Required:

This action applies to all instances of confidential and protected Department of Human Services (DHS) client information being provided in a protective proceeding for guardianship or conservatorship, regardless if the protective proceeding is paid by the State or paid through private means or by another public agency.

Confidential and protected DHS client information: All client information provided to Areas Agencies on Aging (AAA) and Seniors and People with Disabilities (SPD) offices is confidential.

Note: If a physician or another person provides information directly to the petitioning attorney or the court, rather than by a SPD/AAA office, then that information is not considered confidential DHS client information and is not subject to this action.

Minimally necessary and reasonably necessary disclosure: The local office should minimize disclosure whenever possible, however, if the attorney or court visitor requests more information, then provide the information. Under ORS 125.012, the local office may provide enough client information for an attorney to petition the court, the court visitor to make an evaluation, or a judge to make a determination.

Examples of minimizing information:

- When a hospital or facility sends many pages of progress notes and evaluations, the local office should not provide everything to the petitioning attorney. Narrow

down and send only what is relevant to the client's current functioning and the need for a guardian or conservator.

- Only the most recent evaluation or relevant parts of that evaluation generally provides sufficient information.
- Instead of evaluations, the court may accept a brief statement from clinicians that the client is functionally or financially incapacitated and needs a guardian or conservator. These statements may be written as a letter or a prescription order.
- If progress notes contain essential information, provide a summary or excerpts (such as used in evidence section in an APS report) and identify the source. Generally, only a few pages are necessary.
- While diagnosis from a clinician may be provided, it may not be necessary. Instead, the local office may provide brief objective observations such as 'is disoriented to person, place and person' or 'only recognizes someone he sees every day, but cannot remember name or role'.
- Rather than providing many bank statements, a brief chronology of financial losses often provides a picture to understand a financial situation.

Providing documentation

Identifying and marking confidential documents: According to ORS 125.012, the local SPD/AAA office must identify, mark, and segregate all client documentation that the local office provides to the attorney, court visitor, or court such as a physician statement or an affidavit.

To identify, mark, and segregate:

1. Identify client documents by providing the 'ORS 125.012 court cover sheet' (see attached) on DHS stationery and list all the SPD/AAA documents in the cover sheet.

The ORS 125.012 court cover sheet is written for the court to be able to identify documents that DHS determines are confidential. The attached template may be found under the APS tools on the DHS webpage at <http://www.dhs.state.or.us/spd/tools/cm/aps/legal/index.htm>.

The ORS 125.012 cover sheet should be used when giving records to an attorney, court visitor, court, or party to the proceeding.

2. Mark each document as confidential and protected by stamping the front of each page with the red confidential ORS 125.012 stamp.

If the stamp is not available, mark by writing on the front of each page of documentation you provide, "**Confidential DHS Information subject to ORS**

125.012" in large enough font, prominent placement, with a box around it, so the statement can be easily seen by court clerks and the attorney.

FYI: If the documentation is mailed or is a computer-generated PDF, the red ink will show. If faxed or scanned, the red ink will not show, and that is acceptable if the message can be clearly seen.

3. Segregate by attaching the documents to the ORS 125.012 court cover sheet. Ask the attorney or court visitor to submit the documents with the ORS 125.012 court cover sheet.

Note: The attorney or court visitor may change the list of documents in the ORS 125.012 court cover sheet to accurately match how and what documents she or he submits to the court.

Providing Verbal Information

To the petitioning attorney: Refer the petitioning attorney to ORS 125.012. The attorney will take ORS 125.012 into consideration when using oral confidential information about DHS client in the petition.

To other attorneys or parties to the case: Consult with supervisor or may request technical assistance from Central Office.

Testifying: For now, continue to use the confidentiality statement that is available in APS tools. Use of the confidentiality statement in protective proceedings is under review.

To judges, other than testifying: Consult with supervisor or may request technical assistance from Central Office.

Reason for Action: Compliance with ORS 125.012 and OAR 411, Division 26

DHS may not release or disclose client information, except as specifically authorized by the client, law, or as ordered by a court. The 2009 Oregon Legislature passed HB 2137 which made a new exception. Under ORS 125.012, to prevent or lessen serious and imminent harm, SPD may disclose DHS client information to a court or petitioning attorney for the purpose of petitioning the court for guardianships and conservatorships or reporting abuse to the court. However, DHS client information must be protected from further disclosure.

The ORS 125.012 court cover sheet and the ORS 125.012 stamp identify and mark documents that DHS determines to be confidential, so that the court clerks can recognize confidential documents and limit disclosure to what is necessary for the protective proceeding.

Field/Stakeholder review: Yes No

If yes, reviewed by: **SPD Operations Committee and Jane Alm,
Information Security Officer**

If you have any questions about this action request, contact:

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Oregon

Theodore R. Kulongoski, Governor

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Administration**

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[Date]



RE: [Guardianship / Conservatorship for {client name}]

DHS Confidential Information Subject to ORS 125.012

Confidential and protected information disclosed by the Department of Human Services (DHS) to a court for the purposes of adult protective services, as permitted by ORS 125.012, must remain confidential. Pursuant to ORS 125.012(3)(b), before DHS discloses the information, DHS must identify and mark the information as confidential and protected. Pursuant to ORS 125.012(3)(a), “confidential and protected ... information disclosed under this section must remain confidential and, when disclosed to the court, must be sealed by the court.”

The following information is being disclosed and must be protected pursuant to ORS 125.012:

- This cover sheet (1 page)
- [title of document (# pages)]

“Assisting People to Become Independent, Healthy and Safe”
An Equal Opportunity Employer

ORS 125.012 court cover sheet June 2, 2010

HSB 1014 (4/00)

