

Child and Family Services Policy Manual: Confidentiality, HIPAA, and Case Records Introduction – Confidentiality and Case Records

Introduction

The collection of confidential personal information on clients is essential to the provision of social services. Therefore, the collection of confidential personal information creates a responsibility as well as an obligation of every staff person to collect, utilize, store and preserve the information in a manner which preserves the integrity and privacy of the applicant or recipient of social services.

Personal information collected, utilized, stored or preserved shall be:

- Presumed to be confidential and disclosed only as provided for in this section or as ordered by a court of competent jurisdiction;
- Appropriate for and limited to information necessary for the services being provided or sought; and
- Collected, stored, utilized, and preserved according to relevant statutes, regulations and Department policy.

Safeguarding confidentiality is the responsibility of each staff person employed by the Department. It is the default position of the Department that personal information shall not be released until the appropriate review process has been completed and disclosure of the confidential information is determined to be authorized.

Employees shall not look up information on persons in CAPS unless there is a work-related reason to do so. Work-related reasons are those that allow the employee to conduct the responsibilities of their work assignments constituting a “need to know.” “Need to know” relates to the employees job-related activities as defined in the position description. Employees are prohibited from accessing CAPS information for personal reasons either on themselves or on behalf of another employee who may be the subject of CAPS information.

Preserving the confidentiality of Department information regarding an applicant or recipient is a serious matter. Violation of Department policy on confidentiality will result in disciplinary action, up to and including termination of employment, in addition to any criminal penalties which may be imposed by statute as set forth in detail in Policy Section 501-3.

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Sources of Confidentiality Requirements	Various levels of legal authority exist to protect public health, safety and welfare related personal information as provided through our federal and state Constitutions, statutes, administrative rules and policies.
Constitutions	<p>The U.S. Constitution and the Montana Constitution grant authority to government to protect public health, safety and welfare, but that authority must be balanced against:</p> <ul style="list-style-type: none"> • Right of privacy <u>Montana Constitution:</u> The right of individual privacy is essential to the well-being of a free society shall not be infringed without the showing of a compelling state interest. This is a unique provision that does not exist in every state. Therefore, Montanan's are guaranteed an enhanced right to privacy that does not exist in most other states. <u>United States Constitution:</u> A subjective expectation of privacy that society recognizes as legitimate or as reasonable to protect. <ul style="list-style-type: none"> • Right of personal dignity • Right to due process
Statutes	<p>Statutes must provide the protections required by state and federal Constitutions, but carry the force of law and protections. Examples are found at:</p> <ul style="list-style-type: none"> • Mont. Code Ann. § 41-3-205, Child Abuse and Neglect, Confidentiality – Disclosure Exceptions • Mont. Code Ann. § 50-16-601, Montana Government Health Information Act
Administrative Rules	<p>Carry the force of law. Rules expand upon statutory requirements in order to provide more protection or specific detail regarding how information may be released. An example is found at: Mont. Admin. R. 37.47.607 and 608, Protective Services Disclosure</p>
Policies	<p>Explain how the Department is to implement Constitutional, statutory and administrative laws. Must follow all of the above laws.</p>
References	<p>Admin. R. Mont. § 37.47.607 and 608 Mont. Code Ann. §§ 41-3-205, 50-16-601, 53-2-105 Montana Constitution, Art II, Sections 9 and 10</p>

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United States Constitution
45 CFR 1340.14 (I)
45 CFR 1340.20
42 USC § 671

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