

**Child and Family Services Policy Manual: Confidentiality, and Case Records
Definitions- Confidentiality and Public Health Service Act**

Definitions

The following definitions apply to disclosure or access to information maintained by the Department:

CA/N means child abuse or neglect, or abandonment.

CASE RECORDS or CASE RECORDS OF THE DEPARTMENT

according to statute and rule means any records maintained by the Department relating to reports and investigations child abuse, neglect or abandonment. This includes photographs, video and audio tapes, case notes, correspondence, evaluations, and interviews. The term does not include confidential reports or evaluations provided to the department by other professionals, or licensing or registration files of providers licensed, registered or certified by the department. The term "case records" also does not include Criminal Justice Information.

CHILD PHYSICAL ABUSE OR NEGLECT is defined as:

- actual or psychological harm to a child;
- substantial risk of physical or psychological harm to a child; or
- abandonment.

The term includes:

- actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare; or
- exposing a child to the criminal distribution of dangerous drugs, as prohibited by Mont. Code Ann. § 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by Mont. Code Ann. § 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by Mont. Code Ann. § 45-9-132.

DANGEROUS DRUGS means the compounds and substances described as dangerous drugs described in Mont. Code Ann. § 50-32-2.

- In proceedings in which the federal Indian Child Welfare Act is applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).
- The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not

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constitute physical or psychological harm to a child.

CHILD PLACING AGENCY means any corporation, partnership, association, firm, agency, institution or person who places or who arranges for the placement of any child with a family, person or facility not related by blood or marriage, either for foster care or for adoption.

CONFIDENTIAL INFORMATION means information in case records that is restricted by law from being disclosed.

DAY CARE FACILITY means a person, association, or place, incorporated or unincorporated, that provides supplemental parental care on a regular basis. It includes a family day care home, group day care home, or a day care center. It does not include a person who limits care to children who are related to him or her by blood or marriage or are under his or her legal guardianship, or any group facility established chiefly for educational purposes, unless the state is making day care payments to that person or facility.

DEPARTMENT means the department of public health and human services as provided for in Mont. Code Ann. § 2-15-2201.

GUARDIAN means a person appointed by the court to assume the powers and responsibilities of a parent for the child.

HEALTH CARE INFORMATION under the Montana Government Health Care Information Act means information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identify of an individual, including one who is deceased, and that relates to that individual's health care or status.

- The term includes any record of disclosures of health care information and any information about an individual received pursuant to state law or rules relating to communicable disease.
- The term does not include vital statistics information gathered under Mont. Code Ann. § Title 50, chapter 15.
- Health care information is given additional and different protections, pursuant to the Federal Health Insurance and Portability Accountability Act (HIPAA). (See Policy Section 502-4 for further guidance and instruction regarding the release of personal information protected under HIPAA).

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IN CAMERA INSPECTION means a matter is heard “*in camera*” in a judge’s private chambers or in a courtroom from which all spectators have been excluded. Black’s Law Dictionary

INDICATED: Maltreatment occurred, but the perpetrator of the maltreatment is not identified as a “person legally responsible for the welfare of a child.” For example, an uncle commits an act of sexual abuse while visiting his niece.

PARENT means the biological or adoptive parent or stepparent of the child. [Mont. Code Ann. § 41-3-102(11)]

PERMANENT LEGAL CUSTODY: Grants permanent responsibility for care, custody and control of the child to a person or agency. (see 302-6)

PERSON RESPONSIBLE FOR CHILD’S WELFARE means:

- the child's parent, guardian or foster parent or an adult who resides in the same home in which the child resides;
- person providing care in a day-care facility;
- an employee of a public or private residential institution, facility, home or agency; or
- any other person responsible for the child's welfare in a residential setting.

PUBLIC HEALTH SERVICE ACT was formerly the Drug Abuse Prevention, Treatment and Rehabilitation Act of 1970 (42 CFR Part 2). It states that the records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under this Act. These regulations are intended to insure that an alcohol or drug abuse patient in a federally assisted alcohol or drug abuse program is not made more vulnerable by reason of the availability of his or her patient record than an individual who has an alcohol or drug problem and who does not seek treatment.

REASONABLE CAUSE TO SUSPECT means cause that would lead

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a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

RECORDS MANAGEMENT: The systematic application of efficient methods to manage the creation, utilization, maintenance, retention, disposal and preservation of records.

REPORT OF CHILD ABUSE OR NEGLECT means a referral made pursuant to Mont. Code Ann. § 41-3-201 alleging that a child may be an abused or neglected child.

SEAL means to make secure against access and withhold for disclosure.

SUBJECT means the person responsible for the child's welfare who is the alleged perpetrator of the child abuse, neglect or exploitation.

SUBSTANTIATED REPORT means that, after an investigation, the investigating child protection specialist has determined by a preponderance of the evidence that the reported child abuse or neglect occurred, based upon credible information or facts. To substantiate abuse or neglect, the child protection specialist must have evidence which, as a whole, shows that the facts sought to be proved indicate that it is more probable than not that the abuse or neglect **actually** occurred (preponderance of evidence). The evidence of the abuse or neglect must meet the definition of abuse, neglect, or abandonment as defined in Mont. Code Ann. § 41-3-102.

SUBSTITUTE CARE: Full-time care of a child in an out-of-home setting for the purpose of providing food, shelter, security, safety, guidance and, if necessary, treatment of children who are removed from or without the care and supervision of their parents or guardians.

TEMPORARY LEGAL CUSTODY: The legal status created by an order of the court that gives a person or agency the right and responsibility for the care, custody and control of a child on a temporary basis. Can only be granted for six months with one six-month extension.

UNFOUNDED REPORT means that, after an investigation, the investigating person has determined the reported child abuse, neglect, or exploitation has not occurred.

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UNSUBSTANTIATED REPORT means that, after an investigation, the investigator was unable to determine by a preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

YOUTH CARE FACILITY means a facility that is licensed by the Department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child care agencies, transitional living programs, and youth assessment centers.

References

Mont. Admin. R. 37.47.602
Mont. Admin. R. 37.47.608
Mont. Admin. R. 37.50.101
Mont. Code Ann. § 41-3-102
Mont. Code Ann. § 41-3-442
Mont. Code Ann. § 50-16-601 et seq.
Mont. Code Ann. § 52-2-602
42 CFR Part 2