

Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Procedure for Disclosure and Governing Rules

Introduction

The Department has an obligation to release the minimum necessary to those with a “need to know” confidential and protected health care information pursuant to Mont. Code Ann. § 41-3-205, Mont. Code Ann. § 42-3-101, Mont. Code Ann. § 42-6-101 et seq., Mont. Code Ann. § 50-16-601 et seq., 20 USC § 1232(g), 42 CFR Part 2.

This policy is intended to guide staff in assessing requests for disclosure of confidential case record information. It is intended to assist staff in applying their discretion in releasing only the minimum amount of information necessary when there is a need to know within the parameters of state and federal statutes and rules as set forth in this policy. The release of confidential information by the Department is discretionary unless specifically compelled by a court order of District Court Judge.

All case record information should be considered confidential as a default position. Until the steps for disclosure set forth in the section have been completed, no information should be released.

Who May Disclose Information

Disclosure of information may only be approved by the child protection specialist responsible for the case, after consultation with his or her child protection specialist supervisor, or by Child and Family Services regional staff, Department legal unit, the county attorney, or the Child Protection Unit attorney when acting as legal representative of the Department.

Before the child protection specialist discloses any confidential case record information, the process of determining whether to release the confidential information, as set forth in this policy, must be followed and completed. Any failure to follow the procedure for disclosing confidential case records is grounds for disciplinary action, as described in policy section 501-3.

Mandatory Disclosure

The records of the Department must be promptly released to any of the following individuals upon a written request by the individual to the department or the department's designee:

- The attorney general;
- A county attorney or deputy county attorney; or
- A peace officer, as defined in 45-2-101, in the jurisdiction in

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which the alleged abuse or neglect occurred.

The records of the Department must also be promptly disclosed by the department to an appropriate individual described above or to a county interdisciplinary child information team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the following has occurred:

- The death of the child as a result of child abuse or neglect;
- A sexual offense, as defined in 46-23-502, against the child;
- Exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or
- Child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances constituting the criminal manufacture or distribution of dangerous drugs.

Steps for Non-Mandatory Disclosure

The steps set forth in this policy must be followed when determining whether to release confidential case record information. This analysis must be performed by the child protection specialist and the child protection specialist supervisor and documented in ACTD or noted in the hard file if the information is not related to a client. This analysis applies in all circumstances when confidential case record information is requested.

Step 1: Determination regarding detriment or harm

When disclosure of information contained in a child's protective services case record is requested, the child protection specialist, in consultation with the child protection supervisor, must first make the determination as to whether or not disclosure of the information would be either:

- **detrimental to the child; or**
- **harmful to another person** who is a subject of information contained in the case record.

Detrimental to the child

In making a determination regarding whether releasing confidential case record information would be detrimental to the child, the child protection specialist and child protection specialist supervisor should consider the physical and mental health of the child. If, after review, the child protection specialist believes that release of the information would negatively impact either the physical or mental health of the child, then release of the information should be

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considered detrimental.

Presumption of harm to another person

As previously set forth in Section 501-1, Sources of Confidentiality Requirements, both parents and children have rights to privacy under the State and Federal Constitutions. These constitutional rights to privacy are significant and any disclosure should be made so as not to violate these rights that exist to prevent harm to the individual from allowing their private information to be released when not authorized or otherwise permitted.

Parent's health care information

In accordance with Mont. Code Ann. § 50-16-604, disclosure of health care information regarding the child's parents or other non-party to the case is presumed to be harmful to that person.

The only circumstances under which a parent's health care information may be disclosed to any entity other than the parent or the parent's attorney, without harm, are:

- if the parent has signed an authorization specifying which health care information may be disclosed and specifying to whom the health care information may be disclosed; **or**
- under order of the court after an *in camera* inspection; **or**
- Pursuant to Mont. Code Ann. § 42-3-101 and Mont. Code Ann. § 42-6-102, the Department has a duty to disclose to a prospective adoptive parent the social and medical histories of the birth families, including tribal affiliation if applicable. The parents' health care information may be disclosed to pre-adoptive parents upon selection of the family as the child's prospective adoptive family. Identifying information must first be redacted, pursuant to policy section 603-5.

Disclosure of offending parents records to non-offending parent

It is also presumed that disclosure of information to the non-offending parent regarding abuse and/or neglect related to the offending parent is harmful to the offending parent unless contained in court documents which the other parent is legally entitled to receive. The non-offending parent is not entitled to receive copies of any substantiation letters sent to the offending parent. The non-offending parent also may not receive information regarding any unsubstantiated reports or CPIs related to the parent

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named in the unsubstantiated reports or CPIs. If a non-offending parent wishes to have this information, they must obtain a court order or investigative subpoena signed by a District Court Judge.

However, it is permissible to inform the non-offending parent of their duty to protect their child from harm once a determination has been made the child is not safe in the custody of the offending parent. It is also possible for the non-offending parent to obtain copies of the case record documents that relate to the other parent by obtaining a court order or after an *in camera* inspection of the records by a District Court Judge, pursuant to Mont. Code Ann. § 41-3-205 or other appropriate statutory authority.

When release would cause harm or detriment

In those situations in which a child protection specialist determines that disclosure of the requested record would be detrimental to the child or harmful to another person who is a subject of information contained in the records, the child protection specialist will obtain approval of the determination not to disclose from the child protection specialist supervisor. The child protection specialist shall also notify the county attorney or attorney representing the Department of the determination if it is related to an open Title 41 court case; however, this determination does not prevent the disclosure of the information to the county attorney or attorney representing the department in the ongoing Title 41 court case. The county attorney or attorney representing the Department may request an *in camera* review of the records by the court, conducted pursuant to Mont. Code Ann. § 41-3-205, before further disclosure takes place.

If a conflict arises between disclosure and the determination of detriment to the child or harmful to another person and there is not an open and ongoing Title 41 court case, the child protection specialist and child protection specialist supervisor may seek the assistance of the appropriate legal advisor if necessary. The appropriate legal advisor for most other situations outside of an open Title 41 court case is the Department's legal unit.

Step 2: Determination regarding Title 41 legal authority to disclose information to the

After reviewing the request for disclosure of confidential case record information to determine if the disclosure would be detrimental to the child or harmful to another person who is the subject of information contained in the records, the next step is to determine if the law permits the disclosure to the entity requesting the information.

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requesting entities

MCA § 41-3-205

Pursuant to Mont. Code Ann. § 41-3-205, records, including case notes, correspondence, evaluations, videotapes, audiotapes, and interviews, **unless disclosure of the records is determined to be detrimental to the child or harmful to another person** who is a subject of information contained in the records, **may** be disclosed to the following list of entities.

NOTE: It is important to recognize that this statute *permits, but does not require*, the release of confidential case record information.

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| Court | 1. the court for <i>in camera</i> (by the judge) inspection if relevant to an issue before it; |
| Other Agencies
(including out-of-state) | 2. local, state or federal agency or organization, military enclave or Indian tribal organization, in this or any other state that is legally authorized to receive, inspect, or investigate reports of child abuse and neglect and otherwise meets disclosure criteria; |
| | Confidential case record information may be released to a law enforcement agency, including an out-of-state police department (including the FBI) if the requesting law enforcement agency needs the information in connection with an investigation of child abuse or neglect. |
| | As a general rule, DO NOT RELEASE CRIMINAL JUSTICE INFORMATION, without consulting with the attorney representing the Department. Doing so could be in violation of the Montana Criminal Justice Information Act. |
| Substitute Care Providers | 1. licensed youth care facility or child placing agency that is providing services to the family or child who is the subject of the report or to a person authorized by the Department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement; |
| Health Care Providers | 2. a health or mental health professional who is treating the family or child who is the subject of the report; |
| Parent or Guardian | 5. a parent or guardian or person designated by a parent or |

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guardian of a child who is the subject of the report on CA/N, **without the disclosure of the person who reported or provided information regarding the alleged abuse or neglect.**

Non-Offending Parent or Care Givers

Information regarding the offending parent shall not be given to the non-offending parent, without a signed release from the appropriate parent or a court order, as the release of such information is presumed to be harmful to the offending parent who is the subject of such information contained in the case record, pursuant to Mont. Cod Ann. § 41-3-205.

The non-offending parent is not entitled to receive copies of any substantiation letters sent to the offending parent. The non-offending parent also may not receive information regarding any unsubstantiated reports or CPIs related to the parent named in the unsubstantiated reports or CPIs. If a non-offending parent wishes to have this information, they must obtain a court order or investigative subpoena signed by a District Court Judge.

A parent is not presumed to be entitled to receive confidential case record information based solely on the fact that it relates to their child. A non-offending parent may; however, be given information sufficient to allow them to act in a protective manner if the child cannot be safely placed with the offending parent.

Copying at No Cost to Parent or Parent's Attorney

Copies of records, evaluations, reports, or other evidence obtained or generated that are provided to the parent, the guardian, or the parent or guardian's attorney **must** be provided without cost.

Grandparent, aunt, uncle, brother, sister

3. The department shall, upon request from any grandparent, aunt, uncle, brother, or sister who is a reporter of alleged child abuse or neglect, verify whether the report has been received, describe the level of response and timeframe for action that the department has assigned to the report, and confirm that it is being acted upon.

Furthermore, the department may verbally share information with extended family members for placement and case

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planning purposes.

Any additional information regarding the child or children shall only be shared with grandparents, aunts, uncles, brothers, and sisters of the child or children upon confirmation of the person's relationship to the child and after a determination that sharing such information would not be harmful or detrimental to the child(ren).

Information regarding the parent(s) shall not be given to any grandparent, aunt, uncle, brother, or sister, without a signed release from the appropriate parent or a court order, as the release of information related to the parent(s) is presumed to be harmful to the parent(s) who is/are the subject of such information contained in the case record, pursuant to Mont. Cod Ann. § 41-3-205.

Due to the potential harm or detriment that may occur when information is shared with extended family members, it is strongly recommended that information be shared with grandparents, aunts, uncles, brothers, and sisters in the context of Family Group Decision-Making meetings. If information sharing will not occur within a Family Group Decision-Making meeting, any request for information from grandparents, aunts, uncles, brothers, or sisters must be made in writing and follow the protocol for requesting information outside the normal course of business.

Information subject to federal law may also not be disclosed to grandparents, aunts, uncles, brothers, or sisters without a signed release from the parent(s). See Step 5 for further clarification on information protected by Federal law.

Mandatory reporter provided for in 41-3-201(2)

When a professional or official required to report under Montana Code Annotated § 41-3-201 makes a report, the department may share information with:

- That professional or official; or
- Other individuals with whom the professional or official works in an official capacity if the individuals are part of a team that responds to matters involving the child or the person about whom the report was made and the professional or official has asked that

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the information be shared with the individuals.

The department shall, upon request from any mandatory reporter of alleged child abuse or neglect, verify whether the report has been received, describe the level of response and timeframe for action that the department has assigned to the report, and confirm that it is being acted upon.

The department may also share information about the investigation, limited to its outcome and any subsequent action that will be taken on behalf of the child who is the subject of the report.

Individuals who receive information pursuant to this subsection shall maintain the confidentiality of the information as required by 41-3-205.

**Child, Child's Guardian
or Child's CASA, GAL
or Legal Representative**

6. a child named in the records who was alleged to be abused or neglected or his legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent the child in a pending case; **obtain a copy of the court order appointing CASA, GAL, or legal representative for the child and maintain it in the case record.**

Pursuant to Mont. Code Ann. § 41-1-112, the Guardian ad litem **must have access** to these records.

**State Protection and
Advocacy Program**

7. the State Protection and Advocacy Program as authorized by 42 U.S.C. 6042(a)(2)(B); in Montana this is Disability Rights Montana (DRM).

**Prospective foster and
adoptive parents**

8. approved foster and adoptive parents who are or will be providing care for the child;

NOTE: Health and immunization records of the child placed in their home may be shared with foster parents. The minimum necessary information should be shared with foster parents.

Once a placement has ended, or the child has aged-out of care, foster parents shall provide the Department, through the Child Protection Specialist, with a signed and dated statement that all confidential information (written and

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electronic) regarding the child has been properly destroyed (paper documents shredded, electronic information erased) OR return all information to the local CFSD office intact within 30 days. When confidential information is provided to a foster parent as needed, the child protection specialist shall notify not to disseminate the confidential information.

Refer to Mont. Code Ann. § 42-3-101 and § 42-6-101, et seq. and policy section 603-5 for details related to releasing the child's and parent's health information to prospective adoptive parents.

SEE sample confidentiality statement and notice of destruction of confidential records statement at the end of this policy section.

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| Individual subject of a CAN report and Individual's Attorney | 9. | a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered; |
| Probation/Parole Agency | 10. | an agency that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect, including a probation or parole agency; |
| Research/Evaluation Project | 11. | a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the Department to conduct the research or evaluation; |
| FGDM Meetings | 12. | the members of a Family Group Decision-making meeting (FGDM) for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan; |
| | | NOTE: This provision applies to FGDMs held at any time during the case. It is important that all participants at any FGDM sign a confidentiality agreement before participating in a FGDM. |
| Coroner/Medical Examiner | 13. | the coroner or medical examiner when determining the cause of death of a child; |
| Child Fatality Review | | a member of a child fatality review team recognized by the |

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Team	Department.
Investigators of CAN Reports on Day Care, Child Placing Agency or Youth Care Facility (includes out-of-state)	14. a department or agency investigating an applicant for a license or registration that is required to operate a day care facility, youth care facility or child placing agency.
Background Checks on Employment-Related and Volunteer-Related Screening	15. a person or entity carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection must be made in writing. Disclosure under this subsection is limited to information that indicates a risk to children posed by the person about whom the information is sought, as determined by the Department (SEE Section 506-1 for procedure);
News Media, U.S. Congress or State Legislator	16. the news media, a member of the United States Congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent(s) or guardian(s) as determined by the Department;
	Such releases should occur ONLY through the Division Administrator or upon consultation with the Division Administrator.
	NOTE: A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.
Department or Other State Agency Employee or Designee (includes out-of-state)	17. an employee or designee of the Department or other state agency, i.e., Supplemental Nutrition Assistance Program (SNAP), Medicaid, etc., if necessary for administration of programs designed to help the child;
Indian Tribes and Relatives (ICWA)	18. an agency of an Indian tribe or the relative of an Indian family if disclosure is necessary to meet the requirements of the Federal Indian Child Welfare Act;

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- Youth Probation Officer** 19. a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;
- County Attorney, Peace Officer or Attorney Representing Department** 20. a county attorney or peace officer, or an attorney who is hired by or represents the Department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

NOTE: Confidential case record information may be released to a law enforcement agency, including an out-of-state police department (including the FBI) if the requesting law enforcement agency needs the information in connection with an investigation of child abuse or neglect.

CONFIDENTIAL CASE RECORD INFORMATION MAY NOT BE RELEASED TO LAW ENFORCEMENT FOR INVESTIGATIONS NOT DIRECTLY RELATED TO THE INVESTIGATION OF CHILD ABUSE OR NEGLECT OR THE SAFETY OF THE CHILD WITHOUT A SUBPOENA, INVESTIGATIVE SUBPOENA, OR COURT ORDER.

When a parent or child is the subject of the criminal investigation that is separate from the issue of the assuring the child's safety and/or investigating whether child abuse and/or neglect has occurred, the Department will not release confidential case record information to law enforcement without a subpoena and after consultation with the Department's legal unit.

- School Employee** 21. a school employee participating in an interview of a child by a child protection specialist, county attorney or peace officer; or
- TEAMS, COMMITTEES and GROUPS** 22. members of teams, committees, or groups authorized by statute with access to child abuse and neglect records, including:
- CPT a. a child protection team member as authorized by Mont. Code Ann. § 41-3-108;
- FCRC b. a member of a Foster Care Review Committee established under Mont. Code Ann. § 41-3-115;
- Citizen Review Board c. a member of a local Citizen Review Board established under Mont. Code Ann. § 41-3-1003;

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| County Interdisciplinary Child Information Team (MDT) | d. a member of a county interdisciplinary child information team formed under Mont. Code Ann. § 52-2-211 (with a written agreement in place that has been signed and approved by all necessary parties); |
| Local Interagency Staffing Group | e. a member of a local interagency staffing group provided for in Mont. Code Ann. § 52-2-203; or |
| Youth Placement Committee | f. a member of a youth placement committee formed under the provisions of Mont. Code Ann. § 41-5-121. |

NOTE: A confidentiality statement should be signed at meetings of any teams, committees, or groups.

Reporters of CAN

NAMES OF REPORTERS OR INFORMATION WHICH MIGHT IDENTIFY THEM ARE NOT TO BE SHARED WITH THE FAMILY OR ALLEGED PERPETRATOR EXCEPT UNDER SPECIFIC ORDER OF THE COURT. In addition, names and identifying information of any person who provided information on the alleged child abuse or neglect are not shared with the family or alleged perpetrator, unless advised otherwise by legal counsel for the Department.

All identifying information regarding reporters shall be redacted before records are released to the family or alleged perpetrator by the Department.

Nothing in this manual shall be construed so as to violate the provisions of Mont. Code Ann. § 41-3-205, Mont. Code Ann. § 42-3-101, Mont. Code Ann. § 42-6-101 et seq., Mont. Code Ann. § 44-5-101, et seq., Mont. Code Ann. § 50-16-601 et seq., 42 CFR Part 2, 25 USC § 1901, et seq., or 20 USC § 1232(g).

Step 3: Determination regarding federal law (non-personal health information requests)

Federal law is more restrictive in regards to its requirements for disclosure of personal health information or substance abuse treatment records. For further information related to personal health information, see policy section 502-4.

Substance Abuse

Information that identifies a person as a participant in or recipient of

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Treatment Records

substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

Generally, if the Department receives information from a substance abuse treatment program based upon a release signed by the patient, federal confidentiality law and regulation prohibit the Department from any further disclosure of the information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or release is expressly authorized by court order.

These records may be disclosed to the county attorney or attorney representing the department in a Title 41 case when the records are relevant and necessary for use in the course of litigation of the case.

The CFS-210 form (Authorization to Disclose Information) may be utilized to share confidential information with the substance abuse treatment program/provider. The CFS-211 form (Request for Information) or other authorization form belonging to the treatment provider should be signed by the client authorizing a substance abuse treatment program to release information to the Department.

If the law allows for the disclosure, but the child protection specialist determines that the disclosure would be detrimental to the child or harmful to a person named in the record, the child protection specialist may not release the information except to provide the information to the county attorney or attorney representing the Department to allow for the court to conduct an *in camera* review of the confidential case record information, pursuant to Mont. Code Ann. § 41-3-205. A court may then order the requested confidential case record information be released.

Further steps will be necessary if the information requested is a personal health care record protected by HIPAA. If this is the case, consult policy section 502-4 for further steps necessary.

All confidential criminal justice information (i.e. criminal histories or criminal background checks) must remain confidential and may not be copied, distributed, or left in a file when being viewed by an outside entity unless specifically

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authorized by the an attorney for the Department. This information may not be disseminated under any circumstances without the express permission from an attorney for the Department.

Step 4: Determination regarding whether request is within the normal course of business

Once a determination has been made that releasing the confidential case record information requested will not be detrimental to the child or harmful to another person named in the record, and that release is allowed by law, the child protection specialist and child protection specialist supervisor must then determine whether the information is subject to any further restrictions or specified procedures or limitations due to the type of information requested, the identity of the entity requesting the information, or the circumstances surrounding the request for disclosure of the information.

Requests made within the normal course of business

Requests for disclosure that are made within the normal course of business are not required to be made in writing. However, the request for the disclosure, and any disclosure made pursuant to the request, must still be documented in ACTD, or in the hard file if not related to a client, by the child protection specialist. A brief description of these records and/or requests for related records follows.

Discovery and Disclosure in Title 41 Cases

Any requests for confidential case record information made by a party in an open Title 41 court case, or made by an attorney representing a party in an open Title 41 court case, shall be redirected and handled through the county attorney or attorney representing the Department in the open court case. The county attorney or attorney representing the Department may then make any necessary requests for disclosure to the child protection specialist assigned to the case, and the release of confidential case record information to any party or attorney of record in an open case shall then occur through the county attorney or attorney representing the Department without the need for a written request for disclosure.

Licensing and Registration Records

Licensing and registration records may be disclosed to the licensed or registered provider or his or her authorized representative; however, certain information may not be disclosed from the records:

1. The provider may have access to information in the file that pertains to him or her. Information pertaining to other people

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should be removed from the file before the licensed provider is allowed to review it.

2. The confidentiality of referrals received from third parties is a significant factor in encouraging those people to provide their observations to the Department. A request for the identity of the reporter, made in conjunction with a request for licensing or registration records, must be denied, unless the person has agreed to present evidence at a hearing or allows their identity to be disclosed.
3. When information in the licensing file pertains to a report of child abuse or neglect, the statutes protecting the confidentiality of child abuse and neglect records governs.

When information in the record pertains to elder abuse or neglect, the statute protecting elder abuse records apply (pursuant to Mont. Code Ann., Title 52, Chapter 3).

Child Placing Agency License

A copy of a child placing agency license may be given upon request to any district court, proposed adoptive parent, or agency for use in any adoption proceeding in which the licensed agency is involved.

Adoption Records

Pursuant to Mont. Code Ann. § 42-3-101 and Mont. Code Ann. § 42-6-101, et seq., adoption records are confidential and may not be disclosed except pursuant to a valid court order from the court which ordered the decree of adoption.

Disclosure to other DPHHS employees

Information contained in case records may be disclosed to other DPHHS staff and their legal representatives for:

1. the direct provision of social services;
2. administration of any other federal or federally assisted program. These include programs under the Social Security Act which provide assistance in cash or in-kind, or services directly or through contract to individuals on the basis of need. Access to information is limited to eligibility information for such programs and does not include medical, psychological, or other similar reports which remain the property of the professional who completed the report; and
3. for the purposes of conducting an investigation of a program

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managed or administered by another division, information may be shared as indicated by the protocol for that division.

Any case records or information that may be disclosed under the provisions of this section must be disclosed according to the procedures set forth in Section 502-4, except disclosures to Departmental employees or other authorized persons for routine use or for the administration of any federal or federally assisted program.

Transfers to another county

When an applicant or recipient of social services transfers to another county within the state, transfer of case records is necessary to assure continuation of service and may be considered routine use. All case records transferred to another county must be transferred by certified mail or by personal delivery.

Requests made outside the normal course of business

For all requests made that fall outside the normal course of business, and if the request is not related to one of the above-listed situations, a request for confidential case record information must be made in writing.

Content requirements for written requests

A written request shall include:

- The name of the person requesting the information;
- The organization (if any) with which the person is associated;
- The requestor's or organization's address;
- The names of the client(s) about whom information is being requested;
- The reason for the request; and
- The date of the request and the signature of the requestor.

A request received in the form of an Order of the Court will also serve as a written request.

NOTE: A "request for disclosure" is NOT an authorization for disclosure, and does not replace the use of the CFS-210 (authorization to disclose information).

The Department shall respond to written requests for disclosure within 30 calendar days of the request.

If the request for disclosure is denied, the department shall notify

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the person requesting the information in writing of the reasons for denial.

NOTE: Any person who is not authorized to receive the information shall be notified in writing that the information cannot legally be disclosed without a court order.

Disclosure and Discovery Requests in non-Title 41 cases

As a general rule, if a request for discovery or disclosure comes from an attorney representing anyone other than the Department, in a case that is not filed under Title 41, the request should be handled by or as directed by the attorney for the Department. All such requests must be made in writing or in the form of a subpoena.

Examples of types of discovery:

- Subpoenas
- Interrogatories
- Requests for Production
- Depositions

The appropriate legal advisor for situations in which a worker receives a subpoena that is not related to an open Title 41 court case is the Department's legal unit.

When the state is NOT a party to a case in which a subpoena has been issued (e.g. custody and divorce/dissolution cases), contact the Department's legal unit for guidance. In most cases the individual(s) will be requested to reimburse the Department for staff time (including benefits). The request for reimbursement must come from a Department attorney.

Written Authorization (CFS-210)

If a written authorization is determined to be the only mechanism available that will allow the Department to release the requested information, or if the individual wishes to sign a written authorization to have their confidential case records released, then prior to releasing information from the case record, the written authorization must be signed by the individual who is either the subject of the CPS case record or his/her authorized representative. A parent or legal guardian may sign a written authorization for release in regards to the release of information about the child.

If a written authorization is required, CFSD Authorization form CFS-

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210 serves:

- as a release of confidential information from the CPS case record;
- authorizes disclosure of substance abuse treatment information;
- and permits disclosure of educational records.

Step 5: Release of Information

Once a determination has been made to release confidential case record information, the following provisions apply: the records must be marked confidential and a confidentiality statement must be provided, the records must be redacted if appropriate and necessary, and the disclosure must be documented. All of these are more fully described in the following sections.

Confidentiality Statement

Information released must be accompanied by a written statement indicating the information is confidential, confidentiality must be maintained, and may not be used by parties other than those requesting the information and for the purpose for which it is requested. However, the prohibition against releasing the information to a third party does not apply to the parent(s) or guardian of the child. SEE sample confidentiality statement at end of policy.

NOTE: In lieu of a written confidentiality statement attached to the front of confidential information shared, the department may use an ink stamp for written documents or typed in electronic documents that says the following:

**CONFIDENTIAL INFORMATION:
NOT TO BE DISSEMINATED FURTHER
WITHOUT COURT ORDER
OR EXPRESS WRITTEN AUTHORIZATION**

A person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

Refer to section 501-3 for a complete discussion of penalties for unauthorized dissemination of confidential case record information.

Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Procedure for Disclosure and Governing Rules

Redaction of Records

Prior to releasing confidential case records, the child protection specialist must ensure that all information not authorized for disclosure under this policy has been redacted from the records being released. Redacted records must be reviewed and approved by the Child Protection Specialist Supervisor before disclosure.

Often a document will contain both information that can be released and cannot be released.

The identity of reporters of child abuse and neglect must be redacted from all records provided under this policy unless a court has ordered that information disclosed or unless the information is being provided to a county attorney, peace officer, or attorney who is hired by or represents the Department, if necessary for the investigation or prosecution of a case involving child abuse or neglect, in accordance with Mont. Code Ann. § 41-3-205. These entities are also required to maintain the confidentiality of the reporter, in accordance with the requirements of Mont. Code Ann. § 41-3-205(7).

All information that would be detrimental to the child or harmful to any other person who is the subject of the records must be redacted under this policy unless a court has ordered that information disclosed.

For example, if releasing the name of a source of information provided to the child protection specialist in the course of the case would cause a parent to take negative action toward that source, then the name of the source of the information must be redacted before the information is provided to the parent to prevent that harm from occurring.

It is not necessary to redact records that are being provided to the county attorney or the attorney for the department; however, it is recommended that the child protection specialist inform the county attorney or attorney for the department of any information contained in the records that their internal review indicates should likely be withheld by the county attorney or attorney for the department due to detriment to the child or harm to another person named in the records that could occur if the information were to be released. The county attorney or attorney for the department may request an *in camera* review of the records by a District Court Judge as previously set forth.

Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Procedure for Disclosure and Governing Rules

Documentation of Disclosure

The client's case record shall contain the following documentation of disclosures:

- The ALL disclosures of confidential information must be documented and located in the case record.

For example, documentation may be located in correspondence section of the case record, noted on the ACTD (Activity Detail) screen in CAPS, or located in a handwritten case note.

Documentation of disclosures should include such details as:

- a) the date information was disclosed;
- b) the type(s) of information disclosed or duplicated;
- c) how the information was disclosed (in person, mail, phone, fax, e-mail);
- d) the purpose of the release;
- e) for what period of time (e.g., 2002 to present);
- f) the name and address of the party to whom information was disclosed; and
- g) the dated signature and title of the DPHHS representative who supervised the disclosure.

Mont. Code Ann. § 41-3-205

Mont. Code Ann. § 42-3-101

Mont. Code Ann. § 42-6-101, et seq.

Mont. Code Ann. § 44-5-101 et seq.

Mont. Code Ann. § 50-16-601, et seq.

Mont. Code Ann. § 52-3-101, et seq.

Mont. Admin. R. 37.47.607

Mont. Admin. R. 37.47.608

20 USC § 1232g

25 USC § 1901, et seq.

42 CFR Part 2

45 CFR Parts 160 and 164

References

**Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records
Procedure for Disclosure and Governing Rules**

Rev. 08/03
Rev. 10/06
Rev. 10/07
Rev. 10/10
Rev. 01/12
Rev. 10/13
Rev. 02/15

[SAMPLE]

CONFIDENTIAL INFORMATION:
NOT TO BE DISSEMINATED FURTHER
WITHOUT COURT ORDER
OR EXPRESS WRITTEN AUTHORIZATION

Any person authorized to receive records under Mont. Code Ann. § 41-3-205 must maintain the confidentiality of the records and may not disclose the record to anyone other than as provided in that statute. Specifically, the following information cannot be released to others, including parents and their representatives without an *in camera* inspection by the court and a determination by the court that the disclosure is necessary for fair resolution of the issue before it:

- The information that would disclose the identity of any person who reported or provided information on the alleged child abuse or neglect contained in the records.
- Any information whose release would be detrimental to the child or harmful to another person who is a subject of information contained in the records.

Mont. Code Ann. § 41-3-205(2) and (3):

Dissemination of this information without appropriate authorization – whether dissemination is made orally or in written form – may result in criminal liability or civil liability to the person who releases the information or to the person who has failed to protect confidentiality of the information contained in the records.

[OPTIONAL *additional language* WHEN RELEASING TO FOSTER PARENTS or GUARDIANSHIP Providers]:

NOTE: In the event that (*the adoption is not finalized*) (*the guardianship is dissolved*) (*the custodian withdraws from the permanent planned living arrangement*), all of the documents are to be returned to the Department intact within 30 days.

CFSD Notice of the Return or Destruction of Confidential Records

The placement of (*child's name*) _____ in my home ended on (*date*) _____.

I (*care provider's name*) _____ have returned ALL confidential documentation, written and electronic, to (*CFSD child protection specialist/staff person name*) _____ on (*date*) _____ to be destroyed.

OR

I (*care provider's name*) _____ destroyed ALL confidential written information by shredding it, and all electronic information by erasing all copies of any information related to this child on (*date*) _____.

Care Provider's Signature: _____.

Care Provider's Name (please print): _____.

Date of signature: _____.

Notice of Return or Destruction of Confidential Information form (including all records that need to be destroyed) were received by (*CFSD staff name and date received*):

_____.