

Disclosure Analysis Guidelines

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ANALYZING REQUESTS FOR ODHS CHILD WELFARE RECORDS

- A. What records are requested?
- B. What forms is the “request”?
 - 1. Court Order
 - 2. Subpoena – criminal, civil, domestic relations, juvenile court
 - 3. Records Request (local offices process requests from government entities)
 - 4. Written or Verbal
- C. Does ODHS Child Welfare possess/control the records?
- D. How many records does ODHS possess? 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?
- 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 to consent to the disclosure of the records? Analyze as follows:
 - 1. What statutes apply? Refer to the list of 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 ODHS required or permitted to disclose any (or all) of the records?
If ODHS is permitted, but not required, to disclose the records, how does ODHS 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? (authorization is not the proper way to disclose a CPS assessment and any other documents or information gathered in the course of a CPS assessment.)

ORS 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 (Maintenance) or 419B.035 (Confidentiality of records). 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 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 192.345 (Public records conditionally exempt from disclosure) (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]

419B.035 Confidentiality of records; when available to others; rules

(1) Notwithstanding the provisions of ORS 192.001 (Policy concerning public records) to 192.170 (Disposition of materials without authorization), 192.210 (Definitions for ORS 192.210 and 192.220) to 192.478 (Exemption for Judicial Department) and 192.610 (Definitions for ORS 192.610 to 192.690) to 192.810 (Applicability of ORS 192.805) 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 (Duty of officials to report child abuse) to 419B.050 (Authority of health care provider to disclose information) 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, physician assistant licensed under ORS 677.505 (Application of provisions governing physician assistants to other health professions) to 677.525 (Fees) or nurse practitioner licensed under ORS 678.375 (Nurse practitioners) to 678.390 (Authority of nurse practitioner and clinical nurse specialist to write prescriptions or dispense drugs), at the request of the physician, physician assistant or nurse practitioner, regarding any child brought to the physician, physician assistant or nurse practitioner or coming before the physician, physician assistant or nurse practitioner 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 (Jurisdiction) and 419C.005 (Jurisdiction). 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 Office of Child Care 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 339.390 (Investigations by Teacher Standards and Practices Commission of licensed persons) or 342.176 (Complaint process) involving any child or any student;
- (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 (General definitions). Reports or records disclosed under this paragraph must be disclosed in accordance with ORS 192.311 (Definitions for ORS 192.311 to 192.478) to 192.478 (Exemption for Judicial Department);
- (j)** The Office of Child Care for purposes of ORS 329A.030 (Central Background Registry) (10)(g), (h) and (i);
- (k)** With respect to a report of abuse occurring at a school or in an educational setting that involves a child with a disability, Disability Rights Oregon;

(l) The Department of Education for purposes of investigations conducted under ORS 339.391 (Investigations by Department of Education of nonlicensed persons); and
(m) An education provider for the purpose of making determinations under ORS 339.388 (Report of abuse or sexual conduct).

- (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 (General definitions), 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 (Duty of officials to report child abuse) to 419B.050 (Authority of health care provider to disclose information) 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 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 (Duty of officials to report child abuse) to 419B.050 (Authority of health care provider to disclose information) 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 or necessary to determine a claim for crime victim compensation under ORS 147.005 (Definitions) to 147.367 (Services to victims of acts of mass destruction).
- (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 (Duty of officials to report child abuse) to 419B.050 (Authority of health care provider to disclose information) 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, physician assistant or nurse practitioner in this state, as authorized by subsections (1) to (5) of this section, shall be kept confidential by the agency, department, board, physician, physician assistant or nurse practitioner. 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 181A.010 (Definitions for ORS 181A.010 to 181A.350).
- (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 §§3,4; 2009 c.393 §1; 2012 c.3 §2; 2013 c.624 §84; 2014 c.45 §43; 2017 c.108 §5; 2017 c.356 §43; 2017 c.377 §1; 2017 c.616 §2; 2019 c.141 §26; 2019 c.618 §19]

430.399 When person must be taken to treatment facility or sobering 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 sent home or taken to a sobering facility or to a treatment facility by a police officer. If the person is incapacitated, the person shall be taken by the police officer to an appropriate treatment facility or sobering facility. If the health of the person appears to be in immediate danger, or the police officer has reasonable cause to believe the person is dangerous to self or to any other person, the person shall be taken by the police officer to an appropriate treatment facility or sobering facility. A person shall be deemed incapacitated when in the opinion of the police officer the person is unable to make a rational decision as to acceptance of assistance.
- (2) When a person is taken to a treatment facility, the director of the treatment facility shall determine whether the person shall be admitted as a patient, referred to another treatment facility or a sobering 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) When a person is taken to a sobering facility, the staff of the sobering facility shall, consistent with the facility's comprehensive written policies and procedures, determine whether or not the person shall be admitted into the sobering facility. A person who is admitted shall be discharged from the sobering facility within 24 hours.
- (4) In the absence of any appropriate treatment facility or sobering facility, or if a sobering facility determines that a person should not be admitted to the sobering facility, an intoxicated person or a person under the influence of controlled substances who would otherwise be taken by the police officer to a treatment facility or sobering 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.
- (5) An intoxicated person or person under the influence of controlled substances, when taken into custody by the police officer for a criminal offense, shall immediately be taken to the nearest appropriate treatment facility when the condition of the person requires emergency medical treatment.
- (6) The records of a person at a treatment facility or sobering facility may not, without the person's consent, be revealed to any person other than the director and staff of the treatment facility or sobering facility. A person's request that no disclosure be made of admission to a treatment facility or sobering facility shall be honored unless the person is incapacitated or disclosure of admission is required by ORS 430.397 (Voluntary admission of person to treatment facility). [Formerly 426.460; 2011 c.673 §30; 2015 c.730 §3]

Note: See note under 430.397 (Voluntary admission of person to treatment facility).

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 (Order of appointment), 419B.372 (Guardianship as incident of custody), 419C.481 (Guardianship and legal custody of youth offender committed to Oregon Youth Authority) or 419C.555 (Authority to appoint guardian) with authority to make medical and health care decisions;

(B) A person appointed as a health care representative under ORS 127.505 (Definitions for ORS 127.505 to 127.660) to 127.660 (Short title) or a representative under ORS 127.700 (Definitions for ORS 127.700 to 127.737) to 127.737 (Certain other laws applicable to declaration) 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 Oregon State Hospital campuses;

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

(Definitions);

(C) A contractor of the Department of Corrections 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 (Legislative policy) to 430.695 (Treatment of certain receipts as offsets to state funds) 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 431.001 (Findings) to 431.550 (Power of Oregon Health Authority to collect information from local public health administrators) and 431.990 (Penalties);

(F) A program or service established or maintained under ORS 430.630 (Services to be provided by community mental health programs) or 430.664 (Requirements for developmental disabilities programs and support service brokerages);

(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 (Establishment of program).

(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), (17) And (18) 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 or medical assistance, as defined in ORS 414.025 (Definitions for ORS chapters 411, 413 and 414), 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 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 (Definitions for ORS 34.105 to 34.240) to 34.240 (Appeal) or 34.310 (Purpose of writ) to 34.730 (Forfeiture for refusing copy of order or process) and involves a claim of constitutionally inadequate medical care, diagnosis or treatment, or is brought under ORS 30.260 (Definitions for ORS 30.260 to 30.300) to 30.300 (ORS 30.260 to 30.300 exclusive) 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 Oregon Health Authority or an institution operated by the 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 (Rule 100. Short title) to 40.585 (Rule 1008. Functions of court and jury), 183.710 (Definitions for ORS 183.710 to 183.730) to 183.730 (Review of rule by Oregon Sunshine Committee), 183.745 (Civil penalty procedures) and 183.750 (State agency required to prepare public writings in readable form) 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 (Injuries to be reported to law enforcement agency), 146.760 (Immunity of participant in making of report), 419B.010 (Duty of officials to report child abuse), 419B.015 (Report form and content), 419B.020 (Duty of department or law enforcement agency receiving report), 419B.025 (Immunity of person making report in good faith), 419B.030 (Central registry of reports), 419B.035 (Confidentiality of records), 419B.040 (Certain privileges not grounds for excluding evidence in court proceedings on child abuse) and 419B.045 (Investigation conducted on school premises).
- (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 (Access to records of individual with disability or individual with mental illness) (1) shall have access to records, as defined in ORS 192.515 (Definitions for ORS 192.515 and 192.517), as provided in ORS 192.517 (Access to records of individual with disability or individual with mental illness).
- (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.

(18)A health care services provider may disclose information contained in a written account if the conditions of ORS 192.567 (Disclosure without authorization form) (1) to (5) or 192.577 (Disclosure of information concerning adult in custody of Department of Corrections) are met. [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; 2011 c.720 §65; 2013 c.36 §55; 2013 c.688 §24; 2015 c.318 §12; 2015 c.473 §4; 2015 c.736 §53; 2017 c.484 §3]

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

- (1) In all proceedings brought under ORS 419B.100 (Jurisdiction) or 419B.500 (Termination of parental rights generally), each party, including the state, shall disclose to each other party and to a guardian ad litem appointed under ORS 419B.231 (Appointment) 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 under subsection (1) of this section must 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 permanency hearing or a termination trial, except for information received or discovered less than 10 days prior to the hearing or trial.
 - (b) The court may supervise the exercise of discovery to the extent necessary to insure that it proceeds properly and expeditiously.
- (3)
 - (a) When a ward has been placed in the legal custody of the Department of Human Services for care, placement and supervision under ORS 419B.337 (Commitment to custody of Department of Human Services), the department shall disclose to all parties the case plan developed under ORS 419B.343 (Recommendations of committing court), modifications to the case plan and any written material or information about services provided to the ward, or to the ward's parent or parents, under the case plan.
 - (b) Disclosure under this subsection must be made within 10 days of:
 - (A) Completion or modification of the case plan; and
 - (B) Receipt by the department of the written material or information about services provided under the case plan.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) 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; 2013 c.439 §1]

**ORS 418.642 Confidentiality of information about person who maintains foster home;
Exceptions; rules**

- (1) Notwithstanding ORS 192.311 (Definitions for ORS 192.311 to 192.478) to 192.478 (Exemption for Judicial Department), 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]

ORS 419A.257 Reports and materials privileged; permissible disclosures; use of materials in evidence

- (1)** Reports and other materials relating to a child, ward, youth or youth offender's history and prognosis that are created or maintained by or on behalf of the Oregon Youth Authority or the juvenile department are privileged and, except with the consent of the child, ward, youth or youth offender or with the authorization of the court, shall be withheld from public inspection.
- (2)** The Oregon Youth Authority and the juvenile department may disclose and provide copies of reports and other materials relating to the child, ward, youth or youth offender's history and prognosis, if the disclosure is reasonably necessary to perform official duties relating to the involvement of the child, ward, youth or youth offender with the juvenile court or the juvenile department, to the following:
 - (a)** Each other;
 - (b)** The court;
 - (c)** Service providers in the case;
 - (d)** School superintendents and their designees in cases under ORS 419C.005 (Jurisdiction);
 - (e)** Attorneys of record for the child, ward, youth or youth offender;
 - (f)** Attorneys representing a party in the case;
 - (g)** The district attorney or assistant attorney general representing a party in the case;
 - (h)** The Department of Human Services;
 - (i)** The court appointed special advocate; and
 - (j)** The Psychiatric Security Review Board.
- (3)**
 - (a)** The Oregon Youth Authority and county juvenile departments established under ORS 419A.010 (Appointment of counselors and director) to 419A.020 (County responsibility for expenses of juvenile department) may disclose and provide copies of reports and other materials relating to the child, ward, youth or youth offender's history and prognosis to the Department of Corrections for the purpose of enabling the Department of Corrections to perform its official duties relating to the exercise of custody or supervision of a person committed to the legal and physical custody of the Department of Corrections.
 - (b)** The Department of Corrections shall limit the use of reports and other materials disclosed and provided to the department under this section to reports and other materials that relate to the history and prognosis of a youth or youth offender as these pertain to:
 - (A)** A person who was transferred to the physical custody of the authority under ORS 137.124 (Commitment of defendant to Department of Corrections or county) and is subsequently transferred to the physical custody of the Department of Corrections under ORS 137.124 (Commitment of defendant to Department of Corrections or county) or 420.011 (Admissions to youth correction facilities) or any other statute; or
 - (B)** A person committed to the legal and physical custody of the Department of Corrections while the person is under the jurisdiction of the juvenile court under ORS 419C.005 (Jurisdiction), including but not limited to a person in the legal custody of the authority.
- (4)** A person that obtains copies of reports or other materials under this section is responsible for

preserving the confidentiality of the reports or other materials. A service provider, school superintendent or superintendent's designee who obtains copies of reports or other materials under this section shall destroy the copies upon the conclusion of involvement in the case.

(5)

(a) Information appearing in reports or other materials relating to the child, ward, youth or youth offender's history or prognosis may not be disclosed directly or indirectly to any person not described in subsection (2) of this section unless the consent of the child, ward, youth or youth offender or the authorization of the court has been obtained, except for purposes of evaluating the child, ward, youth or youth offender's eligibility for special education as provided in ORS chapter 343.

(b) Information appearing in reports or other materials may not be used in evidence in any proceeding to establish criminal or civil liability against the child, ward, youth or youth offender, whether the 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 an order or judgment of the juvenile court.

(6)

(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 Oregon Youth Authority, juvenile department, juvenile counselor, caseworker, school superintendent or superintendent's designee, teacher or detention worker to whom the information contained in the reports and 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 that is in danger from the child, ward, youth or youth offender.

(b) An agency or a person that 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 (Injuries to be reported to law enforcement agency), 146.760 (Immunity of participant in making of report), 419B.035 (Confidentiality of records), 419B.040 (Certain privileges not grounds for excluding evidence in court proceedings on child abuse) and 419B.045 (Investigation conducted on school premises).

(7)

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. [2005 c.451 §4; 2013 c.417 §5; 2015 c.509 §§1,2; 2019 c.48 §1]

ORS 419B.100 Jurisdiction; bases; Indian children

(1) Except as otherwise provided in subsection (5) of this section and ORS 107.726 (Standing to petition for relief of person under 18 years of age), 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 is a runaway;
- (g)** Who has filed a petition for emancipation pursuant to ORS 419B.550 (Definitions for ORS 419B.550 to 419B.558) to 419B.558 (Entry of judgment of emancipation); or
- (h)** Who is subject to an order entered under ORS 419C.411 (Disposition order) (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 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.

(4) 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 (Definitions for ORS 419B.550 to 419B.558) to 419B.558 (Entry of judgment of emancipation).

(5)

(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; 2011 c.291 §5; 2013 c.1 §61; 2019 c.594 §8]

ORS 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 (Termination upon finding of extreme conduct) to 419B.524 (Effect of termination order), 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; 2011 c.438 §5]

ORS 411.320 Disclosure and use of records limited to purposes connected to administration of public assistance programs; 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 may 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 programs or 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 of the department. 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 officer at the request of the officer. 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.
- (4)** Nothing in this section prohibits disclosure of information between the department and the Oregon Health Authority for the purpose of administering public assistance programs. [1953 c.500 §5; 1971 c.779 §17; 1995 c.609 §8; 1997 c.581 §7; 2001 c.900 §88a; 2011 c.720 §100]

ORS 419A.255 Maintenance; disclosure; providing transcript; exceptions to confidentiality**(1)**

(a) The clerk of the court shall maintain a record of each case and a supplemental confidential file for each case, except as otherwise provided in ORS 7.120 (Disposition of exhibits, notes and audio records of circuit court cases).

(b) The record of the case shall be withheld from public inspection but is open to inspection by the following:

- (A)** The judge of the juvenile court and those acting under the judge's direction;
 - (B)** The child;
 - (C)** The ward;
 - (D)** The youth;
 - (E)** The youth offender;
 - (F)** The parent or guardian of the child, ward, youth or youth offender;
 - (G)** The guardian ad litem for the parent;
 - (H)** A person allowed to intervene in a proceeding involving the child, ward, youth or youth offender;
 - (I)** The court appointed special advocate, and a representative of a CASA Volunteer Program as defined in ORS 184.489 (Definitions), when reasonably necessary for the appointment or supervision of court appointed special advocates;
 - (J)** The attorneys or prospective appellate attorneys for any of the persons listed in subparagraphs (B) to (I) of this paragraph;
 - (K)** The surrogate;
 - (L)** Service providers in the case;
 - (M)** The district attorney or assistant attorney general representing a party in the case;
 - (N)** The juvenile department;
 - (O)** The Department of Human Services;
 - (P)** The Oregon Youth Authority; and
 - (Q)** Any other person or entity allowed by the court pursuant to ORS 419A.258 (Motion to inspect or copy records).
- (c)** The following are entitled to copies of the record of the case:
- (A)** The judge of the juvenile court and those acting under the judge's direction;
 - (B)** A party to the extent permitted under ORS 419B.875 (Parties to proceedings) (2) or 419C.285 (Parties to delinquency proceeding) (2);
 - (C)** A guardian ad litem for a parent to the same extent the parent is permitted to copies under ORS 419B.875 (Parties to proceedings) (2) or 419C.285 (Parties to delinquency proceeding) (2);
 - (D)** Persons listed in paragraph (b)(J) to (P) of this subsection; and
 - (E)** Any other person or entity allowed by the court pursuant to ORS 419A.258 (Motion to inspect or copy records).

(2)

(a) Reports and other material relating to the child, ward, youth or youth offender's history and prognosis in the record of the case or the supplemental confidential file are privileged and, except at the request of the child, ward, youth or youth offender, shall be withheld from public inspection except that inspection is permitted as set forth in subsection (1)(b) of this

section and paragraph (b) of this subsection. The offer or admission of reports and other material in the record of the case or the supplemental confidential file as exhibits in a hearing or trial does not waive or otherwise change the privileged status of the reports and other material, except for purposes of the hearing or trial in which the reports and other material are offered or admitted. Once offered as an exhibit, reports and other material relating to the child, ward, youth or youth offender's history and prognosis that were maintained in the supplemental confidential file become part of the record of the case but are subject to paragraph (e) of this subsection.

(b) A supplemental confidential file is open to inspection by the following:

- (A)** The judge of the juvenile court and those acting under the judge's direction;
- (B)** The parent or guardian of the child or ward in a dependency case;
- (C)** The guardian ad litem for the parent of a child or ward in a dependency case;
- (D)** The parent or guardian of the youth or youth offender in a delinquency case if the youth or youth offender consents to, or the court authorizes, inspection;
- (E)** The guardian ad litem for the parent of a youth or youth offender in a delinquency case if the youth or youth offender consents to, or the court authorizes, inspection;
- (F)** A person allowed to intervene in a proceeding involving the child, ward, youth or youth offender;
- (G)** The court appointed special advocate, and a representative of a CASA Volunteer Program as defined in ORS 184.489 (Definitions), when reasonably necessary for the appointment or supervision of court appointed special advocates;
- (H)** The surrogate;
- (I)** Service providers in the case;
- (J)** The attorneys or prospective appellate attorneys for:
 - (i)** The child;
 - (ii)** The ward;
 - (iii)** The youth;
 - (iv)** The youth offender;
 - (v)** The parent or guardian of the child, ward, youth or youth offender;
 - (vi)** The guardian ad litem for the parent;
 - (vii)** A person allowed to intervene in a proceeding involving the child or ward in a dependency case; or
 - (viii)** The court appointed special advocate and a representative of a CASA Volunteer Program as defined in ORS 184.489 (Definitions);
- (K)** The district attorney or assistant attorney general representing a party in the case;
- (L)** The juvenile department;
- (M)** The Department of Human Services;
- (N)** The Oregon Youth Authority; and
- (O)** Any other person or entity allowed by the court pursuant to ORS 419A.258 (Motion to inspect or copy records).

(c) The supplemental confidential file in cases under ORS 419C.005 (Jurisdiction) may be disclosed to the superintendent of the school district in which the youth offender resides or the superintendent's designee.

(d) The following are entitled to copies of material maintained in the supplemental confidential file:

- (A)** The judge of the juvenile court and those acting under the judge’s direction;
- (B)** Service providers in the case;
- (C)** School superintendents and their designees in cases under ORS 419C.005 (Jurisdiction);
- (D)** Attorneys designated under subsection (2)(b)(J) of this section;
- (E)** The district attorney or assistant attorney general representing a party in the case;
- (F)** The juvenile department;
- (G)** The Department of Human Services;
- (H)** The Oregon Youth Authority;
- (I)** The court appointed special advocate, and a representative of a CASA Volunteer Program as defined in ORS 184.489 (Definitions), when reasonably necessary for the appointment or supervision of court appointed special advocates; and
- (J)** Any other person or entity allowed by the court pursuant to ORS 419A.258 (Motion to inspect or copy records).

(e) A person that obtains copies of material in the supplemental confidential file pursuant to paragraph (d) of this subsection is responsible for preserving the confidentiality of the material in the supplemental confidential file. A service provider, school superintendent or superintendent’s designee who obtains copies of such material shall destroy the copies upon the conclusion of involvement in the case.

(3) Except as otherwise provided in subsection (5) of this section, no information appearing in the record of the case or in the supplemental confidential file may be disclosed to any person not described in subsections (1)(b) and (2)(b) of this section, respectively, 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)

(a) When a person described in subsection (1)(b)(M), (N), (O) or (P) of this section inspects or obtains copies of reports, materials or documents under this subsection or under subsection (1) or (2) of this section, the person may not use or disclose the reports, materials or documents, except:

- (A)** As provided in this subsection or under subsection (1) or (2) of this section;
- (B)** In the juvenile court proceeding for which the reports, materials or documents were sought or disclosed;
- (C)** With the consent of the court; or
- (D)** As provided in ORS 419A.253 (When information in report, material or document considered by court must be identified in record)

(b) Nothing in this section prohibits the district attorney or assistant attorney general representing a party in a juvenile court proceeding, the juvenile department, the Department of Human Services, the Oregon Youth Authority or other parties in the proceeding or their attorneys from disclosing to each other reports, materials or documents described in subsections (1) and (2) of this section 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 the juvenile department. A person to whom reports, materials or documents are disclosed under this subsection is subject to subsection (3) of this section.

(5)

(a) Information contained in the supplemental confidential file that, in the professional judgment of the juvenile counselor, caseworker, school superintendent or superintendent's designee, teacher or detention worker to whom the information in the supplemental confidential file 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 who is in danger from the child, ward, youth or youth offender.

(b) A person that 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 (Injuries to be reported to law enforcement agency), 146.760 (Immunity of participant in making of report), 419B.035 (Confidentiality of records), 419B.040 (Certain privileges not grounds for excluding evidence in court proceedings on child abuse) and 419B.045 (Investigation conducted on school premises). The disclosure of information under this subsection does not make the information admissible in any court or administrative proceeding if it is not otherwise admissible.

(6) Notwithstanding any other provision of law, and subject to subsection (8) of this section, 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 (Jurisdiction);

(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 (Jurisdiction);

(f) The names and addresses of the youth or youth offender's parents or guardians; and

(g) The register described in ORS 7.020 (Register) when jurisdiction is based on ORS 419C.005 (Jurisdiction).

(7) Notwithstanding any other provision of law, and subject to subsection (8) of this section, when a youth has been taken into custody under ORS 419C.080 (Custody), 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.

(8) Except as provided in **ORS 419A.300 (Reports to school districts concerning young persons on conditional release)** and unless otherwise directed by the court, only the juvenile court, the county juvenile department and the Oregon Youth Authority may disclose the information under subsections (6) and (7) of this section if the information is subject to disclosure. The youth authority may disclose only information relating to youth offenders committed to the youth authority by order of the juvenile court if the information is subject to disclosure under subsection (6) or (7) of this section.

(9) Nothing in this section limits access to any juvenile court records by an appellate court reviewing a juvenile court order or judgment. Appellate court rules may establish procedures for appellate court access to juvenile records.

(10) Nothing in this section prohibits the court from providing to the administrator as defined in ORS 25.010 (Definitions for support enforcement laws) the date of entry of a judgment terminating parental rights or the date of entry of a judgment terminating wardship following entry of a judgment of adoption together with the names and dates of birth of the parents and children subject to the judgment.

(11) In addition to any other provision in this section, the Judicial Department may permit county or statewide access to juvenile court records or information by county juvenile departments, the Department of Human Services, the Oregon Youth Authority, district attorney offices, the office of the Attorney General, the office of public defense services, prospective appellate attorneys or public defense providers subject to the following restrictions:

(a) A prospective appellate attorney or public defense provider granted access under this subsection must agree, pursuant to a written agreement with the Judicial Department, to access:

(A) Party information only for purposes of conflicts screening procedures; and

(B) Other records or information about a client only as reasonably necessary for the representation of that client in any juvenile case in which the client is a party, subject to applicable state and federal confidentiality laws.

(b) Any other person or entity granted access under this subsection must agree, pursuant to a written agreement with the department, to access records or information only as authorized and allowed by this section, subject to applicable state and federal confidentiality laws.

(c) The State Court Administrator shall prescribe standards and procedures to implement the provisions of this subsection.

(d) Any person or entity granted access to juvenile court records or information under this subsection must preserve the confidentiality of that information as required under this section.

- (12) A petition filed under ORS 419B.851 (Service of process) 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 (Service of process) (3).
- (13) Nothing in this section prohibits a guardian appointed under ORS 419B.365 (Permanent guardianship) or 419B.366 (Guardianship) from disclosing or providing copies of letters of guardianship when so required to fulfill the duties of a guardian.
- (14) 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.
- (15) Nothing in this section prohibits the Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals or a presiding judge from permitting access to juvenile court records, including the record of the case and the supplemental confidential file in a juvenile court proceeding, or audio or video recordings of a juvenile court proceeding, by researchers or evaluators for the purposes of developing statistics and performing analyses or audits on the effectiveness, cost and other areas of public interest regarding juvenile court programs and activities in accordance with child welfare and juvenile justice state plans and programs related to Title IV-B and IV-E of the Social Security Act and to the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq). The Chief Justice shall, by rule or order, establish standards and guidelines for the release of juvenile court information for research and evaluation purposes to ensure confidentiality consistent with state and federal law and to promote consistent statewide application of this subsection. Statistics and analyses released by researchers and evaluators under this subsection may not contain any information that identifies any individual person involved in a juvenile court proceeding.
- (16) Subject to subsection (11) of this section, the office of public defense services shall be permitted access to juvenile court records for the purposes of performing the office's duties as set forth in ORS 151.219 (Public defense services executive director) to audit or investigate attorney appointment or representation of a party in a juvenile court proceeding in order to ensure adequate representation of parties in juvenile court proceedings consistent with the child welfare state plan related to Title IV-E of the Social Security Act.
- (17) Subject to subsection (11) of this section, the Oregon State Bar shall be permitted access to juvenile court records maintained in the record of the case for the purpose of performing the bar's duties as set forth in ORS 9.005 (Definitions for ORS 9.005 to 9.757) to 9.757 (Retention of client materials) to investigate attorney representation of a party in a juvenile court proceeding and in order to ensure adequate representation of parties in juvenile court proceedings consistent with the child welfare state plan related to Title IV-E of the Social Security Act.
- (18)
 - (a) A child, ward, youth or youth offender, or the parent or guardian of a child, ward, youth or youth offender who is a party to the juvenile court proceeding, who is entitled to inspect or copy the record of the case under subsection (1)(b) and (c) of this section maintains the right to inspect or copy the record of the case after jurisdiction of the court over the child, ward, youth or youth offender terminates and after the child, ward, youth or youth offender has reached the age of majority.

(b) Notwithstanding ORS 419B.524 (Effect of termination order), a parent of a child, ward, youth or youth offender whose parental rights have been terminated maintains the right that existed under subsection (1)(b) and (c) of this section to inspect or copy the record of the case as the record of the case existed up until the time of entry of the judgment terminating the parent's parental rights and may obtain a copy of the judgment terminating the parent's parental rights.

(19) When inspection or copying of the record of the case or of the supplemental confidential file is allowed pursuant to this section, and unless otherwise required by law, the court that maintains the record of the case or the supplemental confidential file is not required to redact the names of, or information about, siblings or other persons contained in the record of the case or the supplemental confidential file.

(20) Nothing in this section prohibits the court, acting as a certifying agency or official as defined in ORS 147.620 (Certification procedures), from certifying a request under ORS 147.620 (Certification procedures) and including in the certification document any information obtained from the record of the case or the confidential supplemental file that is necessary to complete the certification.

(21) Nothing in this section prohibits a court from providing to the Department of State Police, pursuant to ORS 163A.030 (Hearing on issue of reporting by sex offender adjudicated in juvenile court) (11), a copy of an order requiring a youth or youth offender to report as a sex offender or a copy of a form that documents the youth's or youth offender's obligation to report as a sex offender. [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; 2013 c.417 §§3,11; 2013 c.439 §§7,8; 2014 c.71 §§2,3; 2015 c.293 §§1,2; 2016 c.95 §7; 2017 c.630 §7; 2019 c.430 §18; 2019 c.472 §4]

Note: The amendments to 419A.255 (Maintenance) by section 11, chapter 417, Oregon Laws 2013, and section 3, chapter 71, Oregon Laws 2014, became operative September 30, 2016, and apply to juvenile court proceedings commenced on or after September 30, 2016. See section 12, chapter 417, Oregon Laws 2013, as amended by section 8, chapter 71, Oregon Laws 2014, and section 3, chapter 293, Oregon Laws 2015.

ORS 419A.102 Access to confidential information by boards; procedure

- (1) Notwithstanding the provisions of ORS 40.225 (Rule 503. Lawyer-client privilege) to 40.275 (Rule 510. Identity of informer), 412.074 (Use and custody of records of temporary assistance for needy families program), 419B.035 (Confidentiality of records), 419B.045 (Investigation conducted on school premises), 419B.440 (Circumstances requiring reports), 419B.443 (Time and content of reports), 419B.446 (Filing report), 419B.449 (Review hearing by court), 419B.452 (Distribution of report by court) and 419B.460 (Agency's responsibility), 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 (Permanency hearing), 419B.473 (Notice) and 419B.476 (Conduct of hearing), 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]

ORS 419B.112 Court appointed special advocate; duties; immunity; access to information; funding; 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 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 in the Court Appointed Special Advocate Fund established under ORS 184.498 (Court Appointed Special Advocate Fund). Counsel representing a court appointed special advocate may not be paid from moneys in the Public Defense Services Account established by ORS 151.225 (Public Defense Services Account), from moneys appropriated to the Public Defense Services Commission or from Judicial Department operating funds.
- (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, the 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 an order of the court.
- (3) If a juvenile court does not have a sufficient number of qualified court appointed special advocates available to it, 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 (Duties of director or counselor) or 419B.195 (Appointment of counsel for child or ward).
- (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, the court 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 court appointed special advocate 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 (Enforcement of support order).
- (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 inspect and copy, and may consult with the court appointed special advocate regarding, 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 (Maintenance).
- (9) For the purposes of a Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq.) grant to this state under P.L. 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. [2012 c.97 §2; 2012 c.107 §105; 2017 c.630 §9]

Note: 419B.112 (Court appointed special advocate) was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 419B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

ORS 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 (Jurisdiction) and 419B.500 (Termination of parental rights generally) 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 (Intervention) is a party to a proceeding under ORS 419B.100 (Jurisdiction). An intervenor under this paragraph is not a party to a proceeding under ORS 419B.500 (Termination of parental rights generally).

(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 parentage or finds that he is not the legal or biological parent 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 parent 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 (Intervention) is not a party to a proceeding under ORS 419B.100 (Jurisdiction) or 419B.500 (Termination of parental rights generally) 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 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)

(a) The Department of Human Services shall make diligent efforts to identify and obtain contact information for the grandparents of a child or ward committed to the department's custody. Except as provided in paragraph (b) of this subsection, when the department knows the identity of and has contact information for a grandparent, the department shall give the grandparent notice of a hearing concerning the child or ward. Upon a showing of good cause, the court may relieve the department of its responsibility to provide notice under this paragraph.

(b) If a grandparent of a child or ward is present at a hearing concerning the child or ward, and the court informs the grandparent of the date and time of a future hearing, the department is not required to give notice of the future hearing to the grandparent.

(c) If a grandparent is present at a hearing concerning a child or ward, the court shall give the grandparent an opportunity to be heard.

(d) The court's orders or judgments entered in proceedings under ORS 419B.185 (Evidentiary hearing), 419B.310 (Conduct of hearings), 419B.325 (Disposition required), 419B.449 (Review hearing by court), 419B.476 (Conduct of hearing) and 419B.500 (Termination of parental rights generally) must include findings of the court as to whether the grandparent had notice of the hearing, attended the hearing and had an opportunity to be heard.

(e) Notwithstanding the provisions of this subsection, a grandparent is not a party to the juvenile court proceeding unless the grandparent has been granted rights of intervention under ORS 419B.116 (Intervention).

(f) As used in this subsection, "grandparent" means the legal parent of the child's or ward's legal parent, regardless of whether the parental rights of the child's or ward's legal parent have been terminated under ORS 419B.500 (Termination of parental rights generally) to 419B.524 (Effect of termination order).

(8) Interpreters for parties and persons granted rights of limited participation shall be appointed in the manner specified by ORS 45.275 (Appointment of interpreter for non-English-speaking party, witness or victim) and 45.285 (Appointment of interpreter for party, witness or victim with disability). [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; 2013 c.436 §1; 2015 c.216 §1; 2017 c.651 §44]

ORS 192.368 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 (Criminal citation);
 - (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. [Formerly 192.445]

Note: 192.368 (Nondisclosure on request of home address, home telephone number and electronic mail address) was added to and made a part of 192.311 (Definitions for ORS 192.311

to 192.478) to 192.478 (Exemption for Judicial Department) by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

ORS 411.117 Requirements when victims of domestic violence apply for or receive TANF; confidentiality

(1) The Department of Human Services shall:

(a) Identify applicants for and recipients of assistance under the temporary assistance for 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 for 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 for 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 (Sexual abuse in the third degree), 163.425 (Sexual abuse in the second degree) and 163.427 (Sexual abuse in the first degree); or

(d) Using coercive or controlling behavior. [1997 c.330 §2; 2011 c.9 §53]

CHAPTER 407
DEPARTMENT OF HUMAN SERVICES (407-001-0000 TO 407-120-1505)
DIVISION 14
PRIVACY AND CONFIDENTIALITY (407-014-0000 TO 407-014-0320)

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;

(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, including but not limited to reporting disease, injury, and vital events such as birth or death, and conducting 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.

(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.

(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, 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 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 SNAP 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.

(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.

(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, 34 CFR 361.38, 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.

(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) Redislosure. The Department must inform the individual that information held by the Department and authorized by the individual for disclosure may be subject to redislosure 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 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

(b) The disclosure is to a government oversight agency or public health authority, or an attorney of a Department workforce member retained for the purpose of determining the legal options of the workforce member 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 the Department's workforce.

(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; DHSD 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; DHSD 11-2011, f. & cert. ef. 12-16-11)

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010 & 433.045

**FEDERAL AND STATE CONFIDENTIALITY AND DISCLOSURE STATUTES
MOST COMMONLY APPLICABLE TO RECORDS FOUND IN
ODHS 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 DH 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, child abuse registry, attorneys for the child, parent, guardian in the juvenile court proceeding, citizen review board, court appointed special advocate, Office of Child Care for purpose of certifying, registering or otherwise regulating child care facilities, Office of the Children's Advocate, Teacher Standards and Practices Commission for investigations conducted under ORS 339.390 (Investigations) or 342.176 (Complaint process) involving any child or student, any person upon request if the records regard an incident in which a child died or suffered serious injury as the result of abuse, Office of Child Care for the purposes of ORS 329A.030 (Central Background Registry, Disability Rights Oregon for reports of abuse occurring at school or educational setting regarding a child with a disability, an education provider for making determinations under ORS 339.388 (Report of abuse or sexual conduct). 419B.035 (1)(a) – (m).
- 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 ODHS must remain confidential in the hands of the recipient subject to criminal penalty for unauthorized redisclosure. ORS 419B.035(7) & (9).

2. ODHS Child Welfare Records

- a. **State Law** -- Confidentiality and disclosure of ODHS records -- ORS 409.225.
 - ODHS shall not disclose or use contents of any records, files, papers or communications concerning an individual child, family, or other recipient of ODHS 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 ODHS employees, treatment providers, foster or adoptive parents, school officials, and members of a sensitive review committee. 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 ODHS 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 record of the case -- ORS 419A.255(1) & (3).**

- The 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:
 - the judge, child, ward, youth, youth offender, parent, guardian, court appointed special advocate, guardian ad litem for the parent, or intervenor under ORS 109.119(1), and their attorneys.
 - Surrogate, service providers, DA or AAG, juvenile department, ODHS and OYA.
 - Any other person or entity allowed by the court pursuant to ORS 419A.258.
- Juvenile court record of the case may be disclosed with consent of juvenile court. ORS 419A.255(3).
- Entitled to copies:
 - The judge, service providers, school superintendents (ORS 419.C.005), attorneys, DAs, AAGs, juvenile department, ODHS, OYA, CASA
 - Any other person or entity allowed by the court pursuant to ORS 419A.258.

b. **Juvenile court supplemental confidential file -- ORS 419A.255(2), (3) & (5).**

- Open to inspection by:
 - The judge of the juvenile court, parent, guardian, guardian ad litem for parent, CASA, surrogate, services providers attorneys for the child or ward
 - The child, the ward
 - DA, AAG, juvenile department, ODHS, OYA, intervenor under ORS 109.119(1), and other person or entity allowed by the court pursuant to ORS 419A.258. ORS 419A.255(2).

- Entitled to copies:

- The judge, service providers, school superintendents (ORS 419.C.005), attorneys, DAs, AAGs, juvenile department, ODHS, OYA, CASA
 - Any other person or entity allowed by the court pursuant to ORS 419A.258.
- Juvenile court supplemental confidential 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 immediate danger to another person or to society. ORS 419A.255(5).
 - The supplemental confidential file in cases under ORS 419C.005 (Jurisdiction) may be disclosed to the superintendent of the school district in which the youth offender resides or the superintendent's designee.

c. **Juvenile court status -- ORS 419A.255(6).**

- 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, ODHS and OYA inspection and disclosure of records. ORS 419A.257**

- DA or AAG representing the state in a juvenile proceeding, juvenile department, ODHS 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(2)
- ORS 419A.255 does not prohibit DA or AAG representing state in a juvenile proceeding, juvenile department, ODHS, 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).
- Redislosure 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(21), (25), (26) and (27).

- Upon entry of an expunction order, the contact that is the subject of the expunged order shall not be disclosed. ODHS 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 and civil penalties. ORS 419A.262 (25), (26) & (27).

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. **Federal Regulations** – 445 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, etc.

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

- No person shall, except for purposes directly connected with the administration of TANF, disclose or receive any information concerning persons applying for or receiving such aid. ORS 412.074(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.

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 or to share information to verify eligibility for free or reduced price breakfasts or lunches.
- 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 431.302.
- c. **Federal Law** -- Health Insurance Portability and Accountability Act (HIPAA).
 - Permits use or disclosure of PHI with proper authorization, if required by law, pursuant to court order in response to proper subpoena.
 - ODHS is not a HIPAA entity or business associate and is not subject to HIPAA in terms of disclosure, including discovery. If there is concern about disclosing certain medical information a consultation with the AAG is recommended as some disclosure is discretionary and there may be other statutory grounds or means to not disclose.
- d. **State Law** -- Physician-patient privilege. ORS 40.235.
- e. **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 ODHS that a child abuse investigation is being conducted, a “health care provider” must permit law enforcement agency, ODHS, 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 192.556. 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 (§ 2.14).
 - 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 a 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 counselor or 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 unless permitted by federal law, state law or rule.

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 FEPPRA.** 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 § 1400.

d. **Federal Regulations implementing IDEA.** 34 CFR § 300 & 34 CFR § 303.

- 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 Police 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 109.319 & OAR 413-010-0035(8)
- 13. Public records law -- ORS 192.311, 192.314, 192.318, 192.324, 192.329, 192.335, 192.338, 192.240 & 192.345
 - a. **Criminal Investigatory Material exemption -- 192.345(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 --192.345(12).**
 - Conditionally exempts “a personnel discipline action, or materials or documents supporting that action.”
 - c. **Internal Advisory Communications -- 192.355(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** -- 192.355(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** -- 192.355(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** -- 192.355(8).

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

g. **Oregon State Law Exemptions** -- 192.355(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** -- 192.355(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 ODHS 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 DH 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 ODHS 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.



Authorization for Disclosure, Sharing and Use of Individual Information

This form allows the referral, coordination and oversight of provider services.

Legal last name:	First name:	MI:	Date of birth:
Other names:			
Address:	City:	State:	ZIP:
Phone:	Email address:		
Identification type: Pick one			

When I sign this form, I authorize those I name to give specific personal information about me. If I answer "yes" to "mutual exchange," I allow agencies I name to share information back and forth. This is so they can provide better services to me.

Release FROM:	
Purpose of the disclosure, sharing and use:	
Entity name: Pick one	
Date of records: Pick one	
Contact person:	Address:
City, state and ZIP:	
Phone number:	Email address:
Fax number:	Mutual exchange: <input type="radio"/> Yes <input type="radio"/> No
Expiration date or event*:	
Do you request special health information to be released? <input checked="" type="radio"/> Yes <input type="radio"/> No	
Specially protected information: <i>(There may be additional laws for use and disclosure if there is the type of record or information listed in this box. I understand that no information will be disclosed unless I or my representative initial next to the information types below.)</i>	
HIV or AIDS: _____ Mental health: _____ Genetic testing: _____	
Alcohol or drug diagnoses, treatment, referral: _____	
Is there any specific information not to release? <input type="radio"/> Yes <input type="radio"/> No	

Release TO:	
Purpose of the disclosure, sharing and use:	
Entity name: Pick one	
Date of records: Pick one	
Contact person:	Address:
City, state and ZIP:	
Phone number:	Email address:
Fax number:	Mutual exchange: <input type="radio"/> Yes <input type="radio"/> No
Expiration date or event*:	
Is there any specific information not to release? <input type="radio"/> Yes <input type="radio"/> No	

- I was given the chance to ask questions about this form and what it does.
- I understand what this form means and I approve of the disclosures or releases listed.
- I understand that state and federal law protect information about services I receive from any listed:
 - » Agency » Business » Organization » Person
- This authorization is valid for one year from the date I sign it unless otherwise noted.*
- I understand my representative or I can cancel this authorization. However, information shared before I cancel cannot be undone. I can orally cancel an authorization for drug and alcohol information. All other cancellation requests must be written. I must provide any request to cancel to the agency, business, organization or person that is providing the information.
- I understand that federal or state law prohibits re-disclosure of the following, without authorization by me or my representative:
 - » Drug and alcohol diagnosis » HIV and AIDS information » Mental health
 - » Referral information » Treatment records » Vocational rehabilitation records
- I understand that information that does not have re-disclosure restrictions may be re-disclosed. Re-disclosed information may no longer be protected under federal or state law.
- I understand someone may need to contact me about this form to confirm my identity. They may also need to get more information.
- I understand that deciding not to sign this form may:
 - » Prevent agencies from deciding if I am eligible for certain programs.
 - » Prevent me from getting referrals. It may also make coordination of provider services more difficult.
 - » Affect my ability to get health services if it is necessary to share information.
 - » Keep the Oregon Health Plan (OHP) or Medicaid from paying for a service because they do not have authorization.
- **I am signing this authorization of my own free will.**

Signature:

Printed name:

Date:

Security statement

This form may contain your personal information. If you return the form by email there is some risk it could go to someone you don't want to have the information. If you are not sure how to send a secure email, consider using regular mail or fax.

For questions or help to complete this form, please contact the agency you work with.

- Oregon Health Authority: 503-947-2340
- Oregon Department of Human Services: 503-945-5600
- Oregon Commission for the Blind: 971-673-1588
- Oregon Department of Employment: 800-237-3710
- Oregon Department of Education: 503-947-5600
- Oregon Housing and Community Services: 503-986-2000
- Oregon Department of Justice: 503-378-4400
- Oregon Department of Corrections: 503-945-9090
- Oregon Youth Authority: 503-373-7205
- Oregon State Police: 503-378-3720

* This authorization is valid for one year from the date I sign it, unless otherwise noted.

Instructions by section

When you submit the form, you do not need to include the instruction pages.

Creating preset templates

To save time, you can preset the number and type of sections. You can also prefill your organization's information, then save template versions of this form for quick printing. Use the non-printing "Template" field in the top right corner of the form and name the template for your future reference.

Release TO and FROM sections

Purpose of disclosure, sharing and use	<ul style="list-style-type: none"> • Give specific reasons why the information disclosure, sharing and use are needed. • If the person does not want to provide a reason in this field the requesting entity may include the statement "at the request of the person" as the purpose the person initiates the authorization.
Entity name (<i>drop-down list</i>)	<ul style="list-style-type: none"> • Choose an entity from the drop-down list. • If the entity is not listed, choose "Other (please type in here):" Then, type in the entity's name. An entity's name must be specific. For example, listing "medical" or "service provider" is not adequate. Please list the name of the medical or service provider. For a person or other type of organization, such as a school or employer, list the name of the person or other type of organization.
Specific information to be disclosed (<i>pops up after an entity is selected</i>)	<ul style="list-style-type: none"> • Choose a document type from the drop-down list. • If an information type is not listed, choose "Other (please type in here):" and type in a description. Some examples of specific information are: <ul style="list-style-type: none"> » Assessments » Case plans » Financial information » Medicaid billing summaries » Psychological reports » Results of urinalysis » Treatment plans • Do not indicate "entire record" unless it is necessary to accomplish the purpose (see "<i>Purpose of the disclosure, sharing and use</i>", above). • Use the buttons to add or delete additional requested information types, if you need to.
Date of records	<ul style="list-style-type: none"> • Indicate the specific date range for the requested records.
Expiration date or event	<ul style="list-style-type: none"> • This authorization is valid for one year from the date I sign, unless otherwise noted. For example, if "hospital discharge" or "end of litigation," is noted.
Mutual exchange	<ul style="list-style-type: none"> • A "Yes" allows the specific information listed on the form to go back and forth between the record holder and the people or programs listed on this authorization. Mutual exchange opens all requested records for discussion between the record requestor and specified record holders.
Did you request special health information to be released?	<ul style="list-style-type: none"> • Choosing "Yes" will display a section where special health information types can be stated. • A check mark in the space next to the type of health information is not enough. The person must initial the space next to the information if they agrees to release this information. • If you need this section visible in a printed copy, please make sure to choose "Yes" prior to printing.
Is there any specific information not to release?	<ul style="list-style-type: none"> • A "Yes" choice will display a text box where you can list specific information. • If any specific information should not be included when the records are released, please list them here. • If you need this section visible in a printed copy, make sure to choose "Yes" before to printing.

Re-disclosure	<ul style="list-style-type: none"> • Re-disclosure is the disclosure of information by the person on this form. • There may be restrictions on the re-disclosure of information released under this form. • Federal and state regulations prohibit re-disclosure of alcohol and drug, and HIV or AIDS information without specific authorization.
Adding requesting and releasing entities	<ul style="list-style-type: none"> • If there is a need for multiple requesting or releasing entities, use the ADD or REMOVE buttons to add or remove any additional "Releasing agency, business, organization or person" sections before you print the form.

Client acknowledgment section

Signature of the person on this form or a person legally authorized to act for them.	<ul style="list-style-type: none"> • A person legally authorized to act for the person on this form should never be asked to sign a blank or incomplete authorization form.
--	--

Releasing entity: Document when records were shared.

- Entity must:
 - » Maintain a copy of the completed authorization form, either electronically or in paper file, and
 - » Following agency retention schedules.
- If completed authorization forms are stored electronically, a process shall be in place for cancellation. If a signed authorization is later (*cancelled*), that revocation must be noted electronically.
- Do not use labels on the authorization form.
- When completed correctly, the form is the only thing needed to process a disclosure.

Definitions

Disclosure: Information or documents provided to other persons:

- If required or permitted by state law, federal law, federal regulations, or state administrative rule.
- 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 ODHS 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 timelines.

DIRECTOR'S OFFICE

Operational Policy

Policy title:	Public Records Requests, Fees and Waivers		
Policy number:	DHS-010-010		
Original date:	06/09/2008 (DHS)	Last update:	12/18/2017
Approved:	Don Erickson, DHS Chief Administrative Officer		

Purpose

The Department of Human Services (DHS) is committed to accountability and transparency in government and strives to foster these values through the consistent, efficient and timely management of public records requests.

Description

This policy explains the procedure for making public record requests and outlines DHS' process for responding to requests and making nonexempt public records available for inspection and copying.

Applicability

This policy applies to all DHS staff including employees, volunteers, trainees and interns.

All agency employees have a responsibility to comply with state and agency policies, administrative rule, and state and federal law. The agency takes this responsibility seriously and failure to fulfill this responsibility may result in progressive discipline, up to and including dismissal from state service.

Policy

1. DHS shall make records related to DHS business available to the public for review, unless those records are specifically exempt from disclosure.
 - a. Most exemptions to the public records law are in ORS 192.501 and ORS 192.502. Additional exemptions are found in program specific statutes and federal law.
 - b. The agency does not request responsive records from partners, business associates, or contractors.
2. DHS shall make requested records available as soon as practicable and without unreasonable delay. The time needed to make the requested records available will depend on, but is not limited to, the following factors:
 - a. The time required to gather, review, and redact records responsive to requests.
 - b. The type and number of records requested, the amount of review required and the staff available to do the work.
3. A complete request for records includes:

- a. A description of the records sufficient to allow the agency to determine where the records are held, including the type of records, subject matter and approximate date the records were created.
 - b. Contact information for the requester: name, email address and telephone number of the person or organization requesting the public records.
 - c. If requesting records about a DHS client or information in a client file: a completed MSC Form 2099 (Authorization for Use and Disclosure of Individual Information to someone other than the individual whose information is requested) or MSC Form 2093 (Request for Access to Records if disclosure to the individual whose information is requested).
 - d. The format in which the requester wants to receive the records. If the public record is not available in the requested format, the record may be provided in the format in which it is kept by DHS.
4. Requests for public records held by DHS may be submitted to:
- a. www.oregon.gov/DHS/Pages/RecordRequests.aspx
 - b. To the local branch office: Case records, whether released directly to you (Form 2093) or authorization to send the information to someone else (Form 2099).
5. DHS will follow specific timelines and processes for responding to requests for records.
- a. Except in instances listed in subsection (e), within five days of receiving a request, DHS will provide written acknowledgment of the request and inform the requestor whether or not the agency is the custodian of the records, or whether it is uncertain if the agency is the custodian.
 - b. Except in instances listed in subsection (c) or (e), within 15 days of the receiving the request DHS will provide the public records, or state in writing that the request is still being processed and, based on the information currently available, provide an estimated date of completion.
 - c. The 15 day deadline in (b) is suspended if:
 - A. In good faith, DHS requests additional information or clarification regarding the public records request and until such time the requester provides that information or declines to do so; or
 - B. If DHS provides an estimated fee to fulfill the request, until the fee is paid or waived; or
 - C. Subsection (e) applies.
 - d. For DHS, most records requests are complete within 30 days, however large requests may take longer depending on the volume and complexity of the records requested, as well as the complexity of the search.
 - e. The 5 day deadline to acknowledge a request and the 15 day deadline to complete the response do not apply if compliance would be impracticable because:
 - A. The staff needed to complete the response are unavailable, including being on leave or otherwise not scheduled to work;
 - B. DHS' ability to perform other necessary services would be demonstrably impeded; or
 - C. The volume of other records requests being processed by DHS makes the deadlines impracticable.
6. DHS may charge fees reasonably calculated to reimburse the agency for the costs actually associated with gathering, reviewing and redacting records. DHS may also furnish copies without charge, or at a substantially reduced fee, if doing so is in the public interest. Requesters may ask that the agency waive or reduce such fees by submitting a request for a fee waiver or reduction.
- a. DHS charges fees and assesses waiver requests in compliance with Oregon Department of Administrative Services standardized requirements.

- b. Fees may not be avoided by submitting numerous, small requests.
- c. DHS may require that requesters pay fees prior to the review of records for release.

References

[ORS 192.410 to ORS 192.607](#)
[DAS Statewide Policy 104-001-030](#)

Forms referenced

[Request for access to records](#) (MSC 2093)
[Authorization for use and disclosure of information](#) (MSC 2099)
To access other languages visit:
https://aix-xweb1p.state.or.us/es_xweb/FORMS/

Related policies

DHS- 010-010-01 (Rescinded)
DHS-010-010-02 (Rescinded)
[DHS|OHA-010-018 Records Retention and Management Policy](#)
[DHS|OHA-010-018-01 Records Retentions Guidelines](#)

Contact

DHS.RecordsRequest@dhsoha.state.or.us

Policy history

Version 1 06/09/2008 (Department of Human Services)
Version 2 12/18/2017

Keywords

Data, data request, fee, fee waiver, information request, public records, public records request, release of information, waiver

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**OFFICE OF INFORMATION SERVICES
Information Security and Privacy Office**

Operational Policy

Policy title:	Uses and Disclosures of Individual Information		
Policy number:	DHS-100-003		
Original date:	07/12/2009	Last update:	03/06/2017
Approved:	Dr. Reginald Richardson, DHS Deputy Director		

Purpose

This policy is one of a series that describes Department of Human Services (DHS) requirements and expectations for the necessary collection, use, and disclosure of confidential information about individuals in order to provide services and benefits to individuals, while maintaining reasonable safeguards to protect the privacy of information.

Description

This policy describes the privacy rights of individuals receiving benefits and services from DHS, including the right to receive information through alternate means or at alternate locations, what information may be released, who may receive the information, and what is required for an authorization to release individual information. The policy also describes an individual's right to file complaints regarding the use or disclosure of their personal information.

Applicability

This policy applies to all DHS staff including employees, volunteers, trainees and interns and agency contractors.

As keepers of the public trust, all agency employees have a responsibility to comply with state and agency policies, administrative rule, and state and federal law. The agency takes this responsibility seriously and failure to fulfill this responsibility is not treated lightly. Employees who fail to comply with state or agency policy, administrative rule, or state and federal law may face progressive discipline, up to and including dismissal from state service.

Policy

1. Individuals have the right to access, inspect and obtain information about themselves or information that DHS uses in whole or part to make decision about them, unless an access restriction is authorized by law or policy.
2. DHS shall document all requests, their outcomes and information released as appropriate.
3. Individuals are not required to give a reason for making a request,
4. DHS shall deny requests for access to information not held by the agency.
5. Requested information about individuals shall be disclosed if:
 - a. The identity of the person or entity requesting the information has been verified.

- b. The requestor has established their authority to obtain the information that is requested.
 - c. The requested information does not conflict with this policy or federal or state statute or rule.
6. If DHS maintains information about an individual in a record that includes information about other people, the individual is only authorized to see their own information. If the information is about both the individual and other people, DHS shall take steps to ensure the information about others is protected.
7. DHS shall disclose written accounts requested under ORS 179.505 within five (5) business days.
8. DHS shall respond to requests for access to information no later than 30 calendar days after receiving the request. If DHS is unable to act within the 30 calendar day limit, DHS may extend the response time up to 30 additional calendar days, if the request does not involve the release of protected health information (PHI).
9. If DHS grants or denies an individual's request for access to information, in whole or in part, DHS shall inform the individual of the access decision.
10. If DHS grants access to requested information, in whole or in part, DHS shall accommodate reasonable requests in the form or format and in the manner requested by the individual such as mail, email, telephone, or at alternate locations.
- a. If requesting communication by alternate means or at alternate locations, the individual shall be specific about their request.
 - b. If not readily available as requested, DHS shall provide the information in a readable hardcopy format, electronic format or such other format as agreed to by DHS and the individual.
 - c. DHS may provide the individual with a summary of the requested information instead of providing access.
 - d. DHS may provide an explanation of the information if the individual agrees.
 - e. DHS shall grant access to the requested information at a time and place convenient for the individual and DHS.
11. If DHS denies access to requested information, in whole or in part, in a record or file containing PHI, DHS shall, within 30 days:
- a. Offer the individual access to any information to which access is not being denied; and
 - b. Provide the individual with a denial written in plain language, that includes:
 - A. The basis for the denial.
 - B. An explanation of the individual's review rights, including information about how the individual may exercise these rights if the reason for the denial is due to danger to the individual or another person.
 - C. Information about how the individual may file a complaint with DHS.
 - D. The electronic link to the privacy policy and Notice of Privacy Practice (NPP) available for the individual's information and reference.
12. DHS may charge fees in accordance with federal and state statute and rule and DHS policy.
- a. Any person, who requests a copy of information, an explanation, or a written summary of information, is responsible for paying a reasonable, cost-based fee, unless the fee is waived pursuant to DHS policy.
 - b. DHS charges fees for all records based on the scale established in the agency's public records policy.
 - c. Charges related to releases of PHI should be reviewed by the Information Security and Privacy Office.

- d. If a fee is to be charged, individuals shall be given an estimate of fees and agree to pay the fee's prior to information being produced.
13. DHS may terminate its agreement to an alternate location or method of communication if:
 - a. The individual agrees to or requests termination of the alternate location or method of communication; or
 - b. DHS is unable to contact the individual at the location or in the manner requested; or
 - c. If the individual fails to respond to payment requests if applicable.
 14. If DHS terminates its agreement to an alternate location or method of communication DHS shall inform the individual that it is terminating the agreement and of the reason for the termination.
 15. DHS shall comply with the Address Confidentiality Program, upon request by a program participant under ORS 192.836.
 16. Individuals have the right to submit a complaint if they believe that DHS has improperly used or disclosed their protected information, or if they have concerns about the privacy policies of DHS or DHS compliance with their policies. DHS shall give individuals the specific person or office and address for submitting a complaint.
 17. DHS does not require individuals to waive their rights to file a complaint as a condition of eligibility for benefits or services.
 18. DHS shall 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.
 19. Each DHS program shall develop a process to review and determine action on complaints filed with DHS.
 20. DHS staff shall use the MSC 2099, a similar form approved by the Privacy Compliance Officer, or an otherwise legally sufficient form to obtain authorization for disclosure of information. Information may be released for any purpose by an individual or the person legally authorized to act on behalf of the individual.
 - a. An individual may only authorize the release of the individual's own information or another individual for whom that person is legally authorized to act.
 - b. If a person legally authorized to act on behalf of the individual signs the authorization form instead of the individual, a description or explanation of the representative's authority to act for the individual, including a copy of applicable documentation court document appointing the representative, shall also be provided.
 - c. If DHS is the individual's representative, custodian, or guardian the agency signature authority on the authorization form shall follow DHS rules and policy.
 - d. If the information is PHI or relates to health care, the representative shall be a person legally authorized to act on behalf of the individual.
 - e. An attorney representing an individual is not the same as a person legally authorized to act on behalf of the individual.
 - f. Uses and disclosures shall be consistent with the signed authorization.
 - g. Authorizations shall be voluntary.
 21. DHS may explain to the individual that the agency makes program determinations based on the information available and that without a signed authorization, DHS may be unable to verify income or resource information, and may be unable to refer the individual to other services.
 22. When the authorization involves health information, DHS may not require an individual to sign an authorization form in order to receive treatment or to provide a basis for payment or eligibility for

medical services or benefits. However, DHS may require the individual to sign an authorization concerning health information for the following reasons:

- a. DHS may require medical documentation of eligibility for medical assistance programs and may require the individual to sign an authorization if needed to help determine the applicant's eligibility for enrollment in the program; or
- b. DHS and its contracted health care providers may require the individual to sign an authorization before providing health care that is solely for the purpose of creating protected health information for disclosure to a third party, such as in a juvenile court proceeding where a parent is required to obtain a psychological evaluation by DHS and the evaluator, as a condition of conducting the evaluation, requires the parent to sign an authorization to release the evaluation report to DHS; or
- c. Before providing research-related treatment, a DHS health care provider may require the individual to sign an authorization for the use or disclosure of health information for such research.

23. If DHS staff has questions about whether specific information can be disclosed, contact the DHS|OHA Privacy Compliance Officer.

References

[ORS 179.505](#)

[ORS 192.820-192.868](#)

[OAR 407-014-000 to 407-014-0070](#)

Forms referenced

[MSC 2090 DHS|OHA Notice of Privacy Practices](#)

[MSC 2099 Authorization for Use and Disclosure of Information](#)

Contact

Information Security and Privacy Office (ISPO)

Phone: 503-945-6812 (Security)

503-945-5780 (Privacy)

Fax: 503-947-5396

dhsinfo.security@state.or.us

dhs.privacyhelp@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: OCRComplaint@hhs.gov

Policy history

Version 1 DHS 100-002 established 7/12/2009

Version 2 DHS 100-002 revised 03/06/2017

Keywords

Individual Privacy, Notice of Privacy Practices, NPP, Protecting Privacy, Release of Information, Protected Health Information, PHI, Protected Individual Information, PII, Authorization, Releasing Information, Disclose, Disclosure

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Select originating cluster

Information Memorandum Transmittal

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 | <input type="checkbox"/> County Mental Health Directors |
| <input type="checkbox"/> Area Agencies on Aging | <input type="checkbox"/> Health Services |
| <input checked="" type="checkbox"/> Children, Adults and Families | <input type="checkbox"/> Seniors and People with Disabilities |
| <input type="checkbox"/> County DD Program Managers | <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

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:

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

Confidentiality of Client Information

413-010-0010 Purpose (Amended 08/04/15)

The purpose of OAR 413-010-0010 to 413-010-0075 is to describe circumstances in which the Department may and may not disclose client information without a court order.

Stat. Auth.: ORS 418.005 Stats. Implemented: ORS 409.225, 419A.170, 419A.255

413-010-0030

Protection of Information

(Amended 01/04/14)

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 (OAR 413-010-0010 to 413-010-0075):

- (1) Client information is confidential.
- (2) Client records are not available for public inspection.
- (3) Oregon statutes, OAR 407-014, 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 provided in OAR 413-010-0035, 413-010-0045, 413-010-0055, 413-010-0065, and 407-014.

Stat. Auth.: ORS 409.050, 418.005 Stats.

Implemented: ORS 409.010, 409.225, 419A.255, 419B.035

413-010-0035

Prohibited Disclosures

(Amended 01/04/2021)

- (1) If a court order or a specific statute requires the Department to disclose information that this rule protects, the Department must disclose the information.
- (2) The Department may not disclose client information:
 - (a) For purposes not directly connected with the administration of child welfare laws; or
 - (b) When disclosure is not required nor authorized by:
 - (A) ORS 419B.035 (governing confidentiality of child abuse records), set out in section (11) of this rule;
 - (B) ORS 419A.255 (governing confidentiality of juvenile court records) set out in section (12) of this rule; or

(C) Another statute.

(3) The Department may not disclose investigatory information compiled for criminal law purposes, including the record of an arrest or a report of a crime, unless:

(a) The Department determines after consultation with law enforcement or a prosecutor that the information can be disclosed without interfering with an ongoing law enforcement investigation or prosecution of a case; or

(b) The Department determines that disclosure is required by ORS 419B.035(1)(i) because a child, as the result of abuse, died or suffered serious physical injury taking into account the factors listed in ORS 419B.035(2)(a).

(4) Department employees may 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 clients, 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 may 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 may not disclose client information contained in a record sealed by a court order of expunction or any part of the expunged record.

(8) Department Adoption Records.

(a) The Department must seal Department adoption records in its possession consistent with ORS 109.319.

(b) The Department may not access, use, or disclose Department adoption records in its possession except as provided in ORS 109.319. CONFIDENTIALITY OF CLIENT INFORMATION OAR 413-010-0010 to 413-010-0075 Page 14

(c) Subject to subsection (d) of this section, the Department may, without a court order, access, use, or disclose Department adoption records in its possession for the purpose of providing adoption services or administering child welfare services that the Department is authorized to provide under federal or state law.

(d) The Child Permanency or Post-Adoption Program Manager, or their designee, must authorize the unsealing of and access to, use of, or disclosure of Department adoption records by other Department employees.

(e) The Department may, upon request and if available, disclose the county in which an adoption was finalized and the case number of the adoption proceeding as provided in section 6 of HB 2365 (2015).

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

(10) Reports and Records Compiled Pursuant to the Child Abuse Reporting Law.

(a) Each report of suspected child abuse must be immediately reported to a law enforcement agency.

(b) The Department must assist in the protection of a child who is believed to have been abused 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 may not be disclosed until the assessment is completed, except for the reasons stated in paragraphs (e)(A) and (B) of this section. An assessment will not be considered completed while either a protective service assessment or a related criminal investigation is in process. The Department determines 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 must be released upon request to the following:

(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 the Department 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, the Department must 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 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, assess reports of abuse, or protect children from further abuse.

(11) Juvenile Court Records in Department Files.

(a) The Department may not disclose records and information in its possession that are also contained in the juvenile court's record of the case or supplemental confidential file, defined in subsections

(b) and

(c) of this section, except as provided in ORS 419A.255 and other federal and state confidentiality laws pertaining to client records. (b) Record of the Case.

(A) The juvenile court's "record of the case", as defined in ORS 419A.252, includes but is not limited to the summons, the petition, papers in the nature of pleadings, answers, motions, affidavits, and other papers filed with the court, orders and judgments, including supporting documentation, exhibits and materials offered as exhibits whether or not received in evidence, and other records listed in ORS 419A.252. CONFIDENTIALITY OF CLIENT INFORMATION OAR 413-010-0010 to 413-010-0075 Page 16

(B) The record of the case is unavailable for public inspection, but is open to inspection and copying as provided in ORS 419A.255.

(c) Supplemental Confidential File.

(A) The juvenile court's "supplemental confidential file", as defined in ORS 419A.252, includes reports and other material relating to the child's history and prognosis, including but not limited to reports filed under ORS 419B.440, that are not or do not become part of the record of the case and are not offered or received as evidence in the case.

(B) The supplemental confidential file is unavailable for public inspection, but is open to inspection and copying as provided in ORS 419A.255.

(C) The Department is entitled to copies of material maintained in the supplemental confidential file and if such material is obtained, the Department must ensure the confidentiality of that material as provided in ORS 419A.255.

(d) Reports and other materials relating to the child's history and prognosis in the record of the case or in the supplemental confidential file are privileged and except at the request of the child, are unavailable for public inspection but are open to inspection and copying as provided in ORS 419A.255.

(e) When the Department inspects or obtains copies of reports, materials, or documents pursuant to ORS 419A.255(4), the Department may not use or disclose the reports, materials, or documents except as provided in ORS 419A.255.

(12) Records Received from the Oregon Youth Authority or the Juvenile Department. The Department must preserve the confidentiality of reports and other materials it receives from the Oregon Youth Authority or the juvenile department relating to the child, ward, youth or youth offender's history and prognosis, as provided in ORS 419A.257.

Stat. Auth.: ORS 409.050, 418.005, 418.340

Stats. Implemented: ORS 109.319, 109.329, 109.331, 192.501, 409.010, 409.194, 409.225, 418.005, 419A.102, 419A.252, 419A.255, 419A.263, 419B.035, 432.420

413-010-0045

Mandatory Disclosure

(Amended 01/04/2021)

(1) The Department must disclose client information if disclosure is required by ORS 419A.255 or ORS 419B.035. CONFIDENTIALITY OF CLIENT INFORMATION OAR 413-010-0010 to 413-010-0075 Page 17

(2) Unless a client record is exempt from disclosure under the Public Records Law, ORS 192.410 through 192.505, the Department must disclose the client record in the circumstances described below:

(a) If the client is 18 years or older or legally emancipated, the Department must 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 guardian, the Department must disclose a child's client records to the parent or guardian if the child is receiving voluntary Department services.
 - (c) Upon the request of a child's parent or guardian, the Department must disclose a child's client records to the parent or guardian if the child is or has been in the Department's custody unless:
 - (A) 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, including, but not limited to, foster parents, treatment providers and relatives other than the child's parent or guardian.
 - (d) The Department must disclose a child's client record to the juvenile court in juvenile proceedings, including tribal proceedings regarding the child;
 - (e) The Department must disclose a child's client records to an attorney who identifies 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 the Department's activities and responsibilities in child abuse cases. Upon request, the Director or the Director's designee must review the information related to the Department's activities and responsibilities:
- (a) When child abuse causes the death or near death of a child or an adult is charged with a crime related to child abuse; and
 - (b) Unless the information is exempt from disclosure under other law, the Director or the Director's designee must determine an appropriate time for disclosing the information and that determination must depend on, among other things, the CONFIDENTIALITY OF CLIENT INFORMATION OAR 413-010-0010 to 413-010-0075 Page 18 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) The Department, 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 must 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.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 192.410-192.505, 409.225, 419A.170, 419B.035

413-010-0055

Mandatory Disclosure if in the Child's Best Interest

(Amended 01/04/14)

(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 will disclose client information records to the following persons:

- (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; CONFIDENTIALITY OF CLIENT INFORMATION
OAR 413-010-0010 to 413-010-0075 Page 19
- (b) The Division of Child Support of the Department of Justice, 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. Such services include, but are not limited to, those provided by foster parents, child care centers, private child caring agencies, treatment centers, Indian social service or child welfare agencies, physicians and other health care providers, mental health professionals, volunteers, student interns, and child protection teams.

(2) Sensitive Review Committee.

- (a) The Director of the Department of Human Services (Director) may choose to convene, either on the Director's own motion or upon a request of the President of the Senate or the Speaker of the House, a sensitive review committee for the purpose of reviewing the actions of the Department, in order to improve the quality of and strengthen child welfare practice in future cases. If the Director convenes a committee at the request of the President or the Speaker, then the Director must submit the final written report containing the findings, conclusions, and recommendations of the committee to the President and the Speaker no more than 180 days after receiving the request from the President or the Speaker.
- (b) 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 must direct disclosure of relevant client information to persons appointed to a sensitive review committee convened by the Director.
 - (A) Any record disclosed to the committee members must be kept confidential by the members of the committee and must be used only for the purpose for which the record was disclosed.
 - (B) Any records disclosed to the committee members must be returned to the Department upon completion of the review.

Stat. Auth.: ORS 409.050, 409.194, 418.005

Stats. Implemented: ORS 409.010, 409.194, 409.225, 418.005

413-010-0065

Discretionary Disclosure

(Amended 01/04/2021)

- (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 the Department 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 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 self.
- (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 (5) 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 CONFIDENTIALITY OF CLIENT INFORMATION OAR 413-010-0010 to 413-010-0075 Page 21
 - (e) Disclosure is necessary to the administration of the child welfare laws.
- (5) If disclosure is authorized under section (4) of this rule, the Department may disclose information about the person making or causing the public disclosure, not already disclosed, but related to the information made public.
- (6) Review of Department records for research purposes. The Director or the Director's designee may authorize a person or organization to review Department 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 the Department records, and not to include identifying information about any client in the report or reports of the research.
- (7) Investigation of Other Crime:

- (a) Except as authorized by subsection (2)(b) of this rule, and ORS 409.225, Department employees may not disclose to law enforcement client information obtained from client records, conversations with clients or other sources if the employee or employees acquired the information because a person is or has been a client of the Department;
- (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.

Stat. Auth.: ORS 418.005, 419B.035

Stats. Implemented: ORS 409.225, 409.230, 419A.225, 419B.035

413-010-0068

Disclosure of Information Exempt Under the Public Records Law

(Amended 01/04/14)

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 192.410-192.505, 418.005

413-010-0075

Disclosure Procedures

(Amended 01/01/14)

- (1) The manager or the manager's designee must supervise access to records.
- (2) The manager or manager's designee must approve in writing 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 the Department 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(6), (access to records for research purposes), a person authorized to review the Department record may copy the record.
- (6) Any record disclosed must be kept confidential by the person to whom the record is disclosed and must 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 the Department's client at the request of the agency are subject to the Oregon statutes and the Department rules governing disclosure of client information.
- (9) The Department may not permit a person authorized to review a particular client's file to review the complete file if the file includes information about any other client. The Department must 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 the Department, the Department and all participants in the hearing must take all reasonable measures to maintain the confidentiality of the information.

Stat. Auth.: ORS 418.005, 419B.035

Stats. Implemented: ORS 418.005, 419A.255



MEMORANDUM OF UNDERSTANDING
between
State of Oregon Department of Human Services
and
Oregon CASA Network

BACKGROUND

The State of Oregon Department of Human Services (DHS) and Oregon CASA Network (OCN) both provide services so that children who have experienced the trauma of abuse and neglect can be safe, have permanency, and have the opportunity to thrive.

DHS's mission is to help Oregonians in their own communities achieve wellbeing and independence through opportunities that protect, empower, respect choice and preserve dignity.

OCN's mission is to strengthen Oregon CASA programs so that every local program has sustainable resources to advocate for all children who are victims of abuse and neglect in Oregon.

PURPOSE

DHS and OCN recognize the need for collaboration and mutual understanding to achieve the best outcomes for Oregon's children and families. This Memorandum of Understanding between DHS and OCN reflects agreed upon statewide guidelines for the working relationship between DHS senior leadership and OCN leadership, and among local (field) DHS leaders and staff and local CASA program leaders, staff, and volunteers. To achieve these means, DHS and OCN agree as follows:

1. GENERAL PROVISIONS

- 1.1.** DHS's child welfare staff, OCN's governing body and staff, and local CASA programs' governing bodies, staff, and volunteers will model and foster relationships with one another based on mutual respect.
- 1.2.** DHS district managers or program managers and local CASA program directors will negotiate local agreements within the parameters of this MOU and ensure their implementation, including but not limited to:
 - 1.1.1.** Timely and effective communication as outlined in Section 2 of this MOU;
 - 1.1.2.** Effective conflict management as described in Section 8 of this MOU;



- 1.1.3. Training on roles and responsibilities for new and current DHS child welfare staff and for CASA volunteers and staff as outlined in Section 9 of this MOU; and
- 1.1.4. OCN and CASA program staff and volunteers' access to the children's records as outlined in Section 5 of this MOU.

2. COMMUNICATION

- 2.1. The DHS child welfare director (or designee) and the OCN Chief Executive Officer (or designee) will meet at least semi-annually to address any issues or concerns and share strengths and successes.
- 2.2. DHS district or program managers and local CASA program directors will establish and maintain regular contact – at least quarterly – to address local issues or concerns and share strengths and successes.
- 2.3. The DHS caseworker and assigned CASA will communicate in accordance with agreements outlined in the applicable local DHS-CASA program MOU. At minimum:
 - 2.3.1. The DHS caseworker will meet with the CASA within two weeks of the appointment of CASA to the case. At that meeting, the DHS caseworker and CASA will:
 - 2.3.1.1. agree on a communication plan that includes preferences and exchange of usual and emergency contact information;
 - 2.3.1.2. review the caseworker's assessment of the case and family strengths and needs, including the case history, the child safety plan, and any other initial service or case plan; and
 - 2.3.1.3. discuss how the CASA and caseworker will work collaboratively to meet the safety, permanency, and well-being needs of the child.
 - 2.3.1.4. agree that throughout the case, the DHS caseworker and the CASA will provide each other with frequent updates and will timely (as defined in the local MOU) return correspondence.
- 2.4. The DHS caseworker or supervisor will notify the CASA of any potential placement change within 3 business days of the decision, or, in the event of an emergency placement, within 24 hours of the placement change.
- 2.5. The DHS caseworker or supervisor will notify the CASA of any change in worker at least one week in advance of the change, or, in the event of an unanticipated temporary or permanent change, within 48 hours of the change in worker.
- 2.6. A CASA program staff member, as defined in the local MOU, will notify the DHS caseworker of any change in CASA at least one week in advance of the change, or, in the event of an unanticipated temporary or permanent change, within 48 hours of the change in CASA.
- 2.7. The CASA will timely reply (RSVP) to DHS' meeting notices. The DHS caseworker or supervisor will notify CASA immediately upon any cancellation or rescheduling of a



meeting.

3. CASA ROLES AND RESPONSIBILITIES

A CASA (program volunteer or, at times, program staff) is a legal party to the juvenile dependency case in which the CASA is appointed by the court pursuant to applicable statutes.

3.1. The CASA will:

- 3.1.1. Perform all statutory duties, including investigating all relevant information about the case; advocating for the child – ensuring all relevant facts are brought before the court; facilitating and negotiating to ensure the court, DHS, and the child's attorney, if one is assigned, fulfill their obligations to the child in a timely fashion; and monitoring all court orders to ensure compliance and to bring to the court's attention any changes in circumstances that may require a modification of the court's order.
- 3.1.2. Contact the child regularly as appropriate to the case and CASA program standards.
- 3.1.3. 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.
- 3.1.4. Monitor assessments and ensure that DHS or other caretakers meet the child's educational, health, mental/behavioral health, developmental, and dental needs.
- 3.1.5. Recommend appropriate services for the child and family and monitor the status of the child's case.
- 3.1.6. Attend and participate in all court proceedings, Citizen Review Boards, and agency-led meetings regarding the child as appropriate and consistent with CASA program standards.
- 3.1.7. Observe parent-child visits for strengths and challenges; observe other visits arranged by DHS or ordered by the court; and make visit recommendations to the caseworker and court.
- 3.1.8. Submit written reports and recommendations to the court and Citizen Review Board in accordance with local agreements and CASA program standards.

3.2. Outside scope of the CASA's duties:

- 3.2.1. A CASA may only provide transportation for the child or family when authorized by the local CASA program director and by the local program's policies.
- 3.2.2. A CASA may not supervise visits, including parent-child visits or other visits arranged by DHS or ordered by the court.

- 3.3. **Conflict of Interest:** A CASA may not be a service provider to a child or family member of a child for whom the CASA is serving as a CASA volunteer.

4. DHS CASEWORKER ROLES AND RESPONSIBILITIES



The DHS caseworker has primary responsibility for assessing and managing safety threats to children and providing services (including arranging for community services) for the safety, permanency, and well-being of children in the care of DHS.

4.1. The caseworker will:

- 4.1.1.** Adhere to all laws, policies, and agency protocols regulating their duties and conduct, including having at least monthly contact with child(ren), parent(s), and substitute caregiver(s).
- 4.1.2.** Provide the CASA with timely notification of and invitation to all DHS meetings relevant to the child, including child safety planning, Family Decision Meetings, adoption and permanency committee meetings, Citizen Review Board (CRB); WRAP meetings; educational meetings; Independent Living Program (ILP) meetings; and service provider meetings initiated by or known to DHS.
- 4.1.3.** Engage families, their support system, and the CASA, along with other appropriate participants, in developing and implementing case plans tailored to the child's and family's strengths and needs.
- 4.1.4.** Make timely and appropriate referrals to services for the child and family.
- 4.1.5.** Assess, address, and monitor the child's educational, health, mental/behavioral health, developmental and dental needs, including ensuring timely routine preventive dental and health visits.
- 4.1.6.** Submit timely written reports and recommendations to the court and Citizen Review Board, in accordance with laws and local agreements.

- 4.2. Outside scope of caseworker's duties:** The DHS caseworker works collaboratively with the CASA and does not direct the CASA's duties. The DHS caseworker does not suggest CASA duties that are outside the scope of the CASA role such as supervising visits or arranging services.

5. DISCOVERY AND OTHER INFORMATION-SHARING

The effective working relationship between CASA Programs and DHS depends on timely access and sharing of information. CASA is permitted to inspect and copy any records relating to the child involved in the case without the consent of the child, ward or parents.

5.1. Access:

- 5.1.1.** DHS may not disclose to CASA information that identifies persons who have reported child abuse or neglect.
- 5.1.2.** DHS staff and CASA staff, volunteers, and board members will maintain the confidentiality of records in accordance with state and federal law, including records gathered during discovery.
- 5.1.3.** Local DHS-CASA program MOUs will address timely and efficient access to child records, to include providing CASAs:



- 5.1.3.1. with unsupervised access to the child's file upon request, at the DHS office or through alternative methods, and not more than three (3) working days from the request. DHS will strive to provide the access within 24 hours whenever possible.
- 5.1.3.2. sufficient space and time to read the file and make notes
- 5.1.3.3. assistance or access to a copier to copy the portions of the file the CASA deems necessary to fulfill his/her duties, except for information relating to the identity of the reporter and information that needs to be protected pursuant to ORS 419B.035(2) (concerns that outweigh public's interest in disclosure).
- 5.1.4. The CASA, after reading or copying case files, will return the DHS file and materials in the same order and condition as it was received.
- 5.1.5. DHS will not charge CASA (including CASA volunteers, program staff, and OCN staff) for copies.
- 5.2. Timeliness:** Local DHS-CASA program MOUs will establish protocols or parameters for:
 - 5.2.1. Timely exchange of reports and other discovery pursuant to ORS. 419B.035.
 - 5.2.2. Timely DHS responses to a CASA's request for discovery and a schedule for regular disbursement of discovery.
 - 5.2.3. At a minimum, DHS will provide assessments (e.g., CANS, behavioral, mental health, medical, educational) within 3 days of receiving the report.
- 5.3. Efficiency:** DHS, local CASA programs, and OCN will support each other in developing systems and processes that make the best use of available technology, including Oregon e-Courts and email.
- 5.4. Out of home care investigation notices:** Pursuant to ORS Sec. 418.259, when a report is received under ORS Sec. 418.258 (Report of suspected abuse) alleging that a child in care may have been subjected to abuse, DHS shall notify the CASA. Further, if the report is substantiated, DHS shall notify the CASA. Local CASA program MOUs with the local DHS district or branch will govern what will be considered timely notification.

6. ADOPTION SELECTION AND PERMANENCY PLANNING

OAR 413-120-0016 et seq. establishes the procedures for CASA participation in adoption decisions. OAR 413-070-0514 et seq. established the procedures for CASA participation in other permanent planning decisions.

- 6.1. Local MOUs will establish procedures for timely notice and meaningful CASA participation or input on adoption and other permanency decisions. The CASA will provide input to adoption selection and permanency planning decisions in order to serve the child's best interest.
- 6.2. In circumstances where DHS uses an internal permanent planning decision making process, the agency will provide the CASA an opportunity for meaningful input and provide the CASA with information about the rationale for permanency decisions.



7. ACCESS TO THE CHILD

- 7.1. DHS will work collaboratively with OCN and local CASA Programs to include information in the pre-service training for foster parents about the CASA role, including the CASA's statutory authority and requirement to have access to and visits with the child.
- 7.2. DHS acknowledges that the CASA must have reasonable access to the child in the home, foster home, school, facilities or any other location the child lives at or frequents, including an adoptive placement. DHS will facilitate the CASA's reasonable access to the child.
- 7.3. DHS acknowledges, and will facilitate as needed, a CASA's authority to have private conversations with the child. These conversations may occur in the home, foster home, other locations, or public settings.
- 7.4. DHS and OCN mutually understand that a 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 CASA and the child nor official contact with the child, the adoptive parent(s), or other parties.

8. CONFLICT MANAGEMENT

- 8.1. The DHS district or child welfare program manager and the local CASA director or designee will meet regularly – not less than quarterly – and work together to address concerns and work collaboratively to resolve issues.
- 8.2. The local agreement will establish communication-based conflict management protocols, to include:
 - 8.2.1. Direct communication between the persons involved in the concern.
 - 8.2.2. Documentation of the concern, including the frequency, who is involved, whether the issues are based in policy, practice or personality, etc.;
 - 8.2.3. Communication with the supervisor(s);
 - 8.2.4. 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).
- 8.3. 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, then the CASA Director will meet with the District Manager. If the CASA Director and District Manager cannot reach resolution, the District Manager will contact the Child Welfare Director and the CASA Director will contact the OCN CEO. The OCN CEO and the Child Welfare Director will work together with local programs to manage the conflict in a trauma-informed manner and work toward resolution.

9. TRAINING



Positive working relationships develop more effectively when each individual understands the roles and responsibilities of both the child welfare caseworkers and CASAs.

9.1. Local DHS-CASA agreements will include a clear reciprocal plan for training that includes at minimum:

9.1.1. Cross-training opportunities about CASA and Child Welfare Caseworker roles and responsibilities, MOU, mandates and policies. Examples include foster/adoptive parent training, in-service training, or orientation/pre-service training for staff and volunteers.

9.1.2. Joint training on current issues and practices including child neglect, substance use/abuse/dependency, ICWA, ICPC, and Family Meetings. (CSM, OFDM, FDM, YDMs). Examples include: invitations to in-service trainings, community training, co-developed training.

9.1.3. Opportunities for interaction between CASA volunteers and staff and child welfare caseworkers/staff, such as ride alongs, brown bags, other get-togethers, and working together on joint projects.

10. DIVERSITY, EQUITY, INCLUSION

10.1. Services to Culturally Diverse Children and Families: Providing culturally appropriate and equitable access to and maximum benefit from services for all children and youth is a priority for DHS and CASA programs (OCN, local programs). All children and families will be served without regard to race, ethnicity, gender, religion, socioeconomic background, sexual orientation and identity, national origin, age, military or veteran status, disability or any other legally protected status.

10.2. Compliance with the American with Disabilities Act: This MOU is available in alternative formats such as Braille, large print, audio tape, oral presentation, and computer disc. To request an alternative format, call the Oregon Department of Human Services, Contracts and Procurement Unit at (503) 945-5815 or TTY (503) 945-5928.

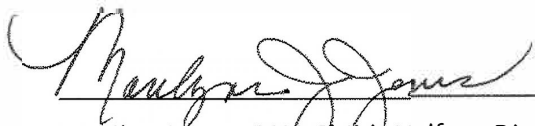
11. DURATION

11.1. This MOU may be modified by mutual consent of authorized officials from DHS and OCN. This MOU shall become effective upon signature by the authorized officials from DHS and OCN, and it will remain in effect until modified or terminated by any one of the partners by mutual consent. In the absence of mutual agreement by the authorized officials from DHS and OCN, this MOU shall end on **June 30, 2021**.

11.2. The child welfare director (or designee) and the OCN CEO (or designee) will review and update this statewide DHS-OCN MOU as necessary, but at least every two years.



By signing this MOU, DHS and OCN acknowledge the urgency and importance of effective and efficient advocacy and service to children and families in Oregon. DHS will assist local DHS offices and OCN will assist local CASA programs to negotiate local agreements guided by this MOU.


Marilyn Jones, DHS Child Welfare Director

2-25-2019
Date


Debra Gilmore, OCN CEO

2/25/2019
Date

STATE OF OREGON
MEMORANDUM OF UNDERSTANDINGBETWEEN
The Department of Human Services
And
The Citizen Review Board

This Memorandum of Understanding, hereinafter referred to as MOU, between the State of Oregon Department of Human Services, Child Welfare Program, hereinafter referred to as DHS, and State of Oregon Judicial Department, Citizen Review Board, hereinafter referred to as CRB, begins upon execution of this MOU by both parties and ends July 31, 2026.

By the signatures below of their authorized representatives, DHS and 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 MOU describes protocols that CRB and DHS believe will further that goal.

1. DEFINITIONS

- 1.1 **Case Review (CRB review, Review):** A process by which local citizen review boards use the Family Report, and other supporting documents, and a scheduled meeting with essential and interested parties to make the findings and recommendations required by ORS 419A.116 that are reported to the Court, DHS, legal parties, and other essential parties who attended the review. Case review by the CRB meets the requirements of “administrative review” under 42 U.S.C § 675 of Title IV-E of the Social Security Act and is part of the “case review system” described under the Act.
- 1.2 **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.
- 1.3 **CRB:** Citizen review boards are established by the Judicial Department pursuant to ORS 419A.090 and comprise part of the Oregon’s case review system under Title IV-E of the Social Security Act.
- 1.4 **DHS:** For the purpose of this memorandum, reference to DHS means the Department of Human Services, Child Welfare Program, specifically.
- 1.5 **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 Family Report.
- 1.6 **Essential Party:** Those persons specifically named as entitled to notice of CRB reviews, including legal parties, pursuant to ORS 419A.098(3) and any other parties identified by DHS, or listed in the Court order to review the Guardianship.

- 1.7 **Family Report:** A written, goal-oriented, time-limited case plan for a family with one or more children in foster care, developed by DHS and the parents or legal guardians, to achieve the child(ren)'s safety, permanency and well-being.
- 1.8 **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.
- 1.9 **Interpreter:** A professional person, not employed by DHS or CRB, who provides oral transfer of meaning from one language to another for a legal party who is Limited English Proficient (LEP)
- 1.10 **Interested Party:** A person, other than essential or legal parties, who has some connection with or knowledge of the child and family situation.
- 1.11 **Legal Party:** Those persons with legal standing before the juvenile court pursuant to ORS 419B.875(1).
- 1.12 **Mature child:** A child who is able to understand and participate in the CRB review without excessive anxiety or fear based on their age and development. A mature child is an essential party entitled to notice of CRB reviews, and there is a rebuttable presumption that a child 14 years or older is a mature child.
- 1.13 **Next Review Due Date:** The date by which the next periodic review (Court or CRB) is required by federal and state law.
- 1.14 **No Paper:** When DHS does not submit to CRB the required case material to conduct, cancel, or paper move a review.
- 1.15 **Paper Move:** A process by which a DHS branch requests the CRB to delay scheduling a case review and hold the paper (Family Report and supporting documents) because there is a scheduled court hearing that is expected to meet the requirements for periodic review. If granted, CRB will move the case from the current CRB date to the next while awaiting the outcome of the hearing.
- 1.16 **Request for Case Information:** A notice from CRB to DHS indicating the CRB has preliminarily scheduled a dependency case for review, and requests that DHS respond with the Family Report and supporting documents or an explanation, with supporting documentation, that the review is not required by federal and state law.
- 1.17 **Trial Home Visit:** When a child is returned home without the court dismissing legal custody.

2 ISSUES OF GENERAL APPLICATION

- 2.1 CRB and DHS will 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 CRB and DHS will address any future concerns or needs that may arise regarding the subject matter of this MOU on an as-needed basis and at local levels, when appropriate. However, recommended or desired changes to protocols, even at local levels, must receive the necessary approval(s) required by the policies and practices of CRB and DHS before such changes are implemented.
- 2.3 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 policies and/or procedures are anticipated to be discussed.
- 2.4 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.
- 2.5 DHS will request that the court conduct the required periodic reviews of children in trial reunification placements as Oregon law does not authorize CRB to review these children.
- 2.6 CRB and DHS will explore the desirability and viability of piloting a project of holding some CRB reviews outside of standard business hours and days.

3. BEFORE THE REVIEW

- 3.1 Notice of cases preliminarily scheduled for CRB review will be provided to DHS by CRB at least 59 days prior to the review date by sending Requests for Case Information to local DHS offices. These cases are determined by data provided to CRB by DHS through a nightly data transfer.
- 3.2 DHS will submit all required case material to CRB via the OJD Secure File Transfer site no later than 5 p.m., 35 days prior to a scheduled review.
- 3.3 The timelines in 3.1 and 3.2 are two weeks earlier than they were in the previous MOU. If needed, CRB and DHS will work on a plan to phase in these timelines with a goal of statewide implementation by January 1, 2021.
- 3.4 For children to be reviewed by CRB, DHS will submit:
 - 3.4.1 A complete CRB Request for Case Information,
 - 3.4.2 A complete and up-to-date Family Report, and
 - 3.4.3 Additional supporting documents applicable to the case.
- 3.5 Additional supporting documents for children to be reviewed by CRB includes:

3.5.1 Assessments

3.5.1.1 Initial CPS Assessment (307B) that brought child(ren) into care (first CRB review only)

3.5.1.2 Any Out of Home Care Report including those Closed at Screening or a completed Assessment since last full judicial review

3.5.2 Placement History

3.5.3 Court documents from period under review

3.5.3.1 Shelter orders

3.5.3.2 Petitions and amended petitions

3.5.3.3 Admissions

3.5.3.4 Jurisdiction/disposition judgments-

3.5.3.5 Most recent review/permanency order or judgment

3.5.4 Voluntary Placement/Custody Agreement (first CRB review only)

3.5.5 Father's Questionnaire

3.5.6 Relative search document

3.5.7 Verifications of ICWA Eligibility from the period under review

3.5.8 Family Engagement Meeting notes

3.5.9 Current Action Agreements/Letters of Expectation

3.5.10 Current Visit and Contact Plan

3.5.11 CANS, Early Intervention Evaluation, Nursing Intake, and Personal Care Assessment (first CRB review only)

3.5.12 Any mental health assessments, psychological evaluations, and developmental evaluations from the period under review

3.5.13 Treatment summary reports from the period under review

3.5.14 Individualized Education Plan or 504 Plan

3.5.15 Youth Transition Plan

3.5.16 Independent Living Program monthly progress notes from the period under review

- 3.5.17 Courtesy or Interstate Compact on the Placement of Children (ICPC) Supervision Report (if applicable)
- 3.5.18 Adoption Tracking sheet
- 3.5.19 Any additional material requested by the board
- 3.6 DHS will submit required case material in the order listed in 3.4 except that the CRB Request for Case Information should be put before the Court documents (3.5.3) and the Family Report should be put after the Court documents (3.5.3).
- 3.7 DHS will limit supporting documents to those listed in 3.5 unless a board specifically requests additional supporting documents.
- 3.8 For children who do not require review, DHS will submit:
 - 3.8.1 The CRB Request for Case Information with a notation explaining why a review is not required by federal and state law; and
 - 3.8.2 Support documentation (e.g., adoption order, placement history screen print showing a trial home visit, etc.)
- 3.9 If a permanency hearing or a complete judicial review hearing is scheduled prior to the next review due date or in the 30-day grace period after the next review due date, DHS will submit a request for a Paper Move. This request for Paper Move should include a completed CRB Request for Case Information and a copy of the most recent Family Report. The CRB will Paper Move the case pending the hearing. Following the hearing, CRB will look up the judgment or order in Odyssey. If the judgment or order contains the findings required by ORS 419B.476 or includes substantially the same findings as required by ORS 419A.116, CRB will set the next review due date to be six months from the court hearing. If the court included in the judgment or order a request for the CRB to review the case at an earlier date, the CRB will set the next review due date to coincide with the judgment or order. If the judgment or order does not contain the findings required by ORS 419B.476 or includes substantially the same findings as required by ORS 419A.116, the CRB review that was paper moved may be held.
- 3.10 CRB and DHS agree that a hearing held earlier than five months after placement should not take the place of the first six-month review and thus cannot be the basis of a paper move.
- 3.11 For all cases that will be reviewed or paper moved by CRB, DHS will include on or with the CRB Request for Case Information names and current addresses of the following:
 - 3.11.1 Legal parties,
 - 3.11.2 Foster provider(s),

- 3.11.3 Applicable essential parties listed in 3.12, and
- 3.11.4 Other essential parties (e.g., significant relatives, services providers, counselors, teachers, etc.).
- 3.12 If any of the following essential parties are assigned to or involved with a child, DHS will ensure their name and current address are included on or with the CRB Request for Case Information:
 - 3.12.1 Adoption worker
 - 3.12.2 Developmental Disability Services case manager
 - 3.12.3 Grandparent
 - 3.12.4 ICPC or other courtesy worker
 - 3.12.5 Independent Living Program (ILP) coordinator
 - 3.12.6 Probation Officer for the child
 - 3.12.7 Tribe, if the Indian Child Welfare Act (ICWA) applies
 - 3.12.8 Wraparound Initiative facilitator
- 3.13 DHS will notify the CRB if an interpreter is needed on the Request for Case Information. CRB will arrange for a court certified or registered interpreter to be present at the review.
- 3.14 A review may not be scheduled and may be set over to the following month by CRB if the required case material is not received by the due date and time. When this occurs, it is called a “No Paper” and CRB will send a memo notifying DHS that the required case material was not received. The memo will also provide a new CRB review date as well as a new due date for the case material.
- 3.15 If, after its receipt of a completed Request for Case Information, the CRB learns of an interested party requesting to be heard and who is not listed on the Request for Case Information, the CRB will notify DHS of the interested party’s request. The CRB will consider hearing from interested parties not listed on the Request for Case Information as allowed by the Supreme Court Operating Rules for Local Citizen Review Boards.
- 3.16 If DHS is aware of special circumstances at the time it transmits a completed Request for Case Information in a particular matter, DHS will include the information related to those circumstances at that time. If either CRB or DHS becomes 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.
- 3.17 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 Case Information completed by DHS for that matter.

- 3.18 CRB will provide written notice to essential parties listed on each completed Request for Case Information at least 29 days prior to the scheduled review.
- 3.19 CRB and DHS acknowledge that legal 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 Family Report to parents; parent's attorneys; child's attorneys; CASAs; and tribes, if ICWA applies, for receipt prior to the CRB review.

4. AT THE REVIEW

- 4.1 DHS will attend scheduled CRB reviews. The case-carrying worker is expected to attend; if they cannot attend, a knowledgeable substitute worker or supervisor will attend. Caseworkers will prioritize attending CRB reviews in person. When caseworkers attend remotely, they will appear by video if they have the technology to do so. 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 The attending DHS worker(s) or supervisor will bring to the CRB review the current volume of the case file or a device with access to OR-Kids.
- 4.3 CRB will encourage an open forum while discussing and reviewing a case. If a legal party wishes to speak privately with the board, or provides written information to the board, or the board wishes to speak privately with the legal party, 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 CRB policy and procedure.
- 4.4 CRB will make the Findings and Recommendations verbally during the review unless CRB, in its sole discretion, finds it impracticable.
- 4.5 ~~CRB and DHS will help the child and family. CRB and DHS will~~ CRB and DHS will help the child and family. CRB and DHS will 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.
- 4.6 If any of the below circumstances occur before the review begins, CRB will reschedule the review:
 - 4.6.1 No DHS representative attends, and the board decides a representative's attendance is necessary to hold the review.
 - 4.6.2 There is a need for an interpreter and one is not available.

- 4.6.3 A legal party whose whereabouts are known and who is entitled to notice did not receive notice.
- 4.6.4 No one appears for the review.
- 4.7 If any of the below circumstances occur after the review begins, CRB will continue the review:
 - 4.7.1 The tribe with legal 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 rescheduled CRB reviews and continuances.
- 4.9 The time of the essential 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 CRB, 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 4.10.2 or 4.10.3, 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 recommendation, the board will discuss the response and decide whether they feel action is needed. If the board would like the court to review the matter, CRB will file a recommendation with the court that a hearing be scheduled and include the DHS response to the CRB recommendation. CRB will forward the DHS response and recommendation for a court

hearing to DHS; attorneys for the parent(s) and child(ren); and CASA, if appointed to the case. CRB will follow the procedures outlined in 4.10 through 4.12 if the board wants to schedule an early CRB review.

6. TITLE IV-E COST REPORTING

6.1 Purpose:

This MOU 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' cost allocation process.

6.2 CRB Responsibilities:

6.2.1 CRB will provide, to DHS' General Accounting Unit, quarterly reports on CRB's Title IV-E eligible 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 acknowledge receipt of the CRB's Title IV-E quarterly report within three (3) days of receiving the report.

6.3.2 DHS will include CRB's Title IV-E eligible costs in DHS' cost allocation process. DHS' cost allocation process culminates in the filing of the quarterly Title IV-E federal claim.

6.3.3 DHS will notify CRB when they have filed the quarterly Title IV-E federal claim.

6.3.4 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' receipt of information which could reasonably indicate that DHS would withhold CRB Title IV-E eligible costs.

6.4 Joint Responsibilities:

6.4.1 CRB and DHS will cooperate in identifying which CRB expenditures are allowable Title IV-E costs. (Some examples of costs that are not allowable

Title 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 Title IV-E costs will be transferred to CRB. CRB will treat the transaction as a “transfer in” for Department of Administrative Services 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 CRB IV-E Operating Account.
- 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 MOU are received by CRB.

7. CHILD ABUSE PREVENTION AND TREATMENT ACT FUNDS TRANSFER AND ASSOCIATED REQUIREMENTS

- 7.1 This MOU establishes an agreement whereby DHS will transfer to CRB \$36,000 per year from its annual Child Abuse Prevention and Treatment Act (CAPTA) grant award, for as long as funds are available or until this memorandum is changed, to support the CRB's statutory mandate to advocate for effective policies, procedures, and laws in the child welfare system; and to comply with CAPTA grant requirements that the State maintain a minimum of three CRB citizen review panels. CRB will provide DHS' General Accounting Unit an invoice for \$12,000 in September, January, and May of each year.
- 7.2 CRB Responsibilities:
 - 7.2.1 CRB will maintain a minimum of three citizen review panels composed of volunteer members who are broadly representative of the community in which such panel is established, including members who have expertise in the prevention and treatment of child abuse and neglect.
 - 7.2.2 The citizen review panels described in section 7.2.1 must meet not less than once every three months, and are responsible for carrying out the functions described in 42 USC§ 5106a(c)(4).
 - 7.2.3 The CRB will assure that the panels described in 7.2.1 prepare and make available to the State and public, on an annual basis, a report containing a summary of the activities of the panel and recommendations to improve the child protection services system at the State and local levels. This report will be submitted to DHS' CAPTA grant manager on or before May 15, of each year.
- 7.3 DHS Responsibilities:
 - 7.3.1 DHS will include the CRB citizen review panel's reports in the CAPTA

section of the Annual Progress and Services Report (APSR) submitted to the Administration for Children and Families by the Department.

- 7.3.2 No later than 6 months after the date on which the CRB's citizen review panels submit their annual reports to the DHS CAPTA grant manager, DHS will submit a written response that describes whether or how the State will incorporate the recommendations of the panel(s) to make measurable progress in improving the State and local child protective system.

8. JOINT DEVELOPMENT OF ELECTRONIC INFORMATION SHARING SYSTEMS

- 8.1 Collaboration in data sharing is paramount in improving permanency outcomes.
- 8.2 CRB and DHS will 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 DHS Contract Officer: _____ Date: _____

Citizen Review Board

By: Nancy J. Cozine

Date: July 27, 2020

Name: Nancy Cozine

Title: State Court Administrator

Department of Human Services

By: Rebecca Jones Gaston

Date: 07/27/2020

Name: Rebecca Jones Gaston

Title: Child Welfare Director

Summary and Guidance on Compliance with 42 CFR, Part 2 (Federal Regulations regarding Alcohol and Drug Records)

The Federal Alcohol and Drug Confidentiality law is 42 CFR, Part 2. It originated in the early 1970s. This law protects individuals by restricting the flow of protected A&D information unless there is consent from the individual. In addition, it lays out precisely what is needed for that information to be shared. The laws around A&D confidentiality (since 1996) are specific and more restrictive than HIPAA laws about regular health and medical records. At times it may feel that complying with this law can slow things down and make the communication process more cumbersome. It is good to keep in mind that this law has been the foundation for people to participate successfully in treatment for over 40 years. ODHS can follow the law and still provide the needed information with proper attention paid to the rights of all.

For ODHS, the most common step to both accessing and sharing this information is obtaining a client signed authorization, “release of information” (MSC 3010). It is important to note that a signed client authorization does not require or compel an A&D treatment program to share information. In addition, the law requires two key things on every legal release of information form. The first is the purpose and need for the disclosure and the second is a description of how much and what kind of information will be disclosed. Release forms that ask for “everything” are often ignored. Treatment programs may feel forwarding all information in a clinical file is unnecessary or inappropriate. Strong community relationships are very important.

For the most part 42 CFR is simple. Among other things, ODHS 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 our DOJ attorneys and their supervising attorneys.

With regard to the attorneys representing ODHS, the AAG "works for us" so we have an attorney-client relationship. When a caseworker forwards ODHS child welfare records to an AAG, the AAG is responsible for complying with the Federal law. It is understood that the portion of the records that fall under this law will be kept within the confines of internal communications and the attorney-client relationship. It is further understood they will not re-release the information for discovery, or any other purpose, without either a signed authorization or a court order. If necessary, the AAG may seek a court order that would require and authorize disclosure of the information to other parties in the proceeding.

However, the local District Attorney (DA) or defense attorneys are NOT our attorneys. No ODHS employee should forward any protected A&D information to a DA without either a signed authorization (release) that clearly specifies the identity of 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 information, but we MAY NOT forward the information. If they insist, refer them to an AAG. The AAG has expressed a strong desire and willingness to have these conversations locally. Some things to keep in mind:

- 42 CFR is specifically about A&D information from treatment program records. It does NOT cover every piece of A&D information related to the client. General A&D information you have from family members or other parties in the case is NOT covered by 42 CFR.
- 42 CFR supersedes HIPAA as it is more specific and restrictive.
- 42 CFR forbids sharing of A&D treatment record information for discovery or based on a subpoena. A court order or signed authorization is required.
- Drug testing and results that ODHS provides as a service, with ODHS funds, at a local collection site, not administered through a treatment program, are ODHS records. Those drug tests ARE NOT covered by 42 CFR.
- Drug testing completed at an A&D treatment program, and the results, are treatment records and therefore are covered by 42 CFR.
- No, you may not read a protected A&D treatment file, re-summarize it and then forward the summary of protected information on with the ODHS file. The A&D treatment INFORMATION is protected in all forms. The law about re-release applies to written and oral releases. You may not share the actual protected documents, a summary of the documents, or talk about information you read in the documents, without proper authorization.
- The fact that a court mandated a client into treatment does not alter the fact that the program may only disclose information with proper authorization (there may be an exception to this in some criminal “drug courts”).

You will have cases where you do not have a client signed authorization and you really need protected A&D information to go to key people for the court to understand the safety concerns of a case. In those instances, you have to be clear with the court without violating the law. If this scenario occurs, consult with an AAG to determine how best to proceed.