

Section 5 Overview

This section describes the manner in which case records are composed, maintained, and expunged. This section also explores a person's access to records and case transfer procedures.

The following guidelines relate to the sharing of confidential information maintained by the Division. Staff shall share confidential information using the guidelines provided for the specific type of information sought.

For policy regarding a client's right to insert a statement into his/her record, see related subject below:

Related Subject: Section 1Chapter 2.8 Client's Right to Insert a Statement into His/Her Case Record

Chapter 2 Overview

This chapter describes who may have access to confidential information within records and the manner in which the information may be shared.

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Attachments:

Attachment A: Coversheet for Release of CA/N Records
Attachment B: Deleted per CD11-75 dated 9-13-11 – See Section 2 Chapter 4.5.5
Office of the Child Advocate

2.1 CA/N Investigations/Family Assessments

The following guidelines have been established to ensure that any disclosure of information concerning a CA/N Investigation, Family Assessment and Non-Caretaker Referral is made only to persons or agencies that have a right to such information. Staff must attach the [CA/N Records Cover Sheet](#) on any disseminated written records. It is then the recipient's responsibility to ensure the information is not re-released to other parties.

Related Subject: Section 5, Chapter 2, Attachment A Cover Sheet for Release of CA/N Records

The confidentiality of the reporter is essential. Therefore, prior to sharing the reporter's name, supervisory consultation and approval are necessary. The identity of the reporter should only be disclosed to the following with regard to CA/N Investigations, Family Assessments, and/or Non-Caretaker Referrals:

- Appropriate federal, state, or local government agencies with a need for such information in order to carry out its responsibility under the law to protect children from child abuse or neglect;
- A Grand Jury, juvenile officer, prosecuting attorney, law enforcement officer involved in the investigation of CA/N, juvenile court or other court conducting CA/N or child protective proceedings, and other government entities with a need for such information in order to carry out its responsibilities under the law to protect children from CA/N;
- A physician or a designated agent who reasonably believes that the child being examined may be abused or neglected;
- Appropriate staff of the Division;
- Any state agency acting pursuant to statutes regarding a license, which provides care or services to children; and
- Any child fatality review panel.

Information pursuant to Section 210.150, RSMo., may be shared with the following agencies and individuals:

- A. Court Adjudicated, Preponderance of Evidence, and Probable Cause findings are shared only with:
 1. Appropriate federal, state, or local government agencies with a need for such information in order to carry out its responsibility under the law to protect children from CA/N;

2. A physician or designated agent who reasonable believes that the child being examined may be abused or neglected;
3. Appropriate staff of the Division;
4. Any child named as a victim, or a legal representative or guardian of such person when such person is a minor;
 - The Domestic Violence section of the case record is to remain confidential unless otherwise ordered by the court.
 - Prior to the release of any identifying information, staff shall determine if the release of information may place a person's life or safety in danger. If it is determined that a person's life or safety may be in danger, the identifying information shall not be released. The reasons for such a determination should be documented in the case record.
5. Any alleged perpetrator or their attorney (or parent/legal guardian of the alleged perpetrator in the case of juvenile alleged perpetrators);
 - When an alleged perpetrator requests a release of records, the redacted records must be released, except in a very limited set of circumstances as described below:
 - **An alleged perpetrator SHALL have access to appropriately redacted CA/N investigative records in the following situations under §§ 210.150.2(5) and 210.150.3(3) RSMo:**
 - There is a pending criminal investigation but no formal criminal charges have been filed in court;
 - The alleged perpetrator has been indicted for a misdemeanor;
 - The alleged perpetrator has been charged with a misdemeanor by the filing of an information
 - The alleged perpetrator has been charged with a felony by indictment; or
 - The alleged perpetrator has been charged with a felony by the filing of a criminal complaint in court arising out of the facts and circumstances identified in the investigative records, and the felony complaint has resulted in an information after a preliminary hearing has been held or

the alleged perpetrator has waived preliminary hearing and information and the case has been bound over for trial

- **An alleged perpetrator SHALL NOT have access to hotline CA/N investigative records under §§ 210.150.2(5) and 210.150.3(3), RSMo in cases where the following applies:**
 - The perpetrator has been formally charged with a felony by the filing of a criminal complaint in court arising out of the facts and circumstances identified in the investigative records;
 - The felony complaint has not yet resulted in an information after a preliminary hearing and the preliminary hearing has not been waived;
 - Prior to the release of any identifying information, staff shall determine if the release of information may place a person's life or safety in danger. If it is determined that a person's life or safety may be in danger, the identifying information shall not be released. The reasons for such a determination should be documented in the case record.
6. Any parent or their attorney unless they are a perpetrator who meets the above criteria for not being allowed access to the record.
- The Domestic Violence section of the case record is to remain confidential unless otherwise ordered by the court.
 - Prior to the release of any identifying information, staff shall determine if the release of information may place a person's life or safety in danger. If it is determined that a person's life or safety may be in danger, the identifying information shall not be released. The reasons for such a determination should be documented in the case record.
7. A Grand Jury, juvenile officer, prosecuting attorney, law enforcement officer involved in the investigation of CA/N, juvenile court or other court conducting CA/N or child protective proceedings, and other government entities with a need for such information in order to carry out its responsibilities under the law to protect children from CA/N;
8. Any person engaged in a bona fide research project, with the permission of the Director (identifying information can only be released with permission of the child or the child's parent or guardian);
9. Any child care facility or any public or private agency providing care of a child may request screening of employees and volunteers;

10. Any person who inquires about a specific child care facility, except no identifying information shall be released;
 11. Any state agency acting pursuant to statutes regarding a license, which provides care or services to children;
 12. Any child fatality review panel; and
 13. Designated Probation and Parole staff.
- B. Unsubstantiated and Family Assessment records retained by the Division are to be shared only with:
1. Appropriate Division staff;
 2. Any child named in the report as a victim, a legal representative, or the parent or guardian;
 - The Domestic Violence section of the case record is to remain confidential unless otherwise ordered by the court.
 3. Any alleged perpetrator or parent (however no reports shall be released with pending criminal charges until an indictment has been returned by a Grand Jury to stand trial, the prosecutor has filed charges, or the charges have been dropped/dismissed);
 4. Child fatality review panels;
 5. Criminal justice agencies including the juvenile office;
 6. Multidisciplinary agencies, including a physician or designee who is providing services to the child or family, with the consent of the parent/guardian or legal representative of the child. (During a Family Assessment information may be shared without the parents' permission);
 7. Persons engaged in research, with no identifying information, unless written permission is obtained from the child or parent/guardian;
 8. Designated Probation and Parole staff when concerns involve a DOC common client.

Legal Representatives:

1. Juvenile Courts and Juvenile Officers:
 - a. Share information without a subpoena with appropriate juvenile court personnel and attorneys who represent the court.

- b. Volunteer advocates who are designated by the court shall be provided with all reports relevant to the case and shall have access to records relating to the child or his family members. The reporter's name shall not be shared.

2. Probation and Parole Pre-sentence Investigator:

- a. Share information with Probation and Parole officers and Pre-sentence investigators under the following circumstances:
 - When an alleged perpetrator has been found guilty of a criminal charge of child abuse or neglect;
 - When an alleged perpetrator has been arrested for an offense of child abuse or neglect;
 - When an alleged perpetrator is on parole/probation for a conviction of child abuse or neglect and part of the terms of his/her parole/probation is to cooperate with a Children's Division (CD) treatment plan.
 - When any hotline report of abuse or neglect is received involving DOC common clients who are currently on Probation or Parole.
 - When the client is an alleged perpetrator of child abuse or neglect. CD should provide designated Probation and Parole staff with a report, CA/N-5, of the common client's history on all prior Preponderance of Evidence findings. CD will also provide a summary of the treatment provided to the alleged perpetrator as well as available treatment plans the court may wish to consider.
 - When such notification is reasonably necessary to ensure the safety of a child or assist in the investigation of an allegation of abuse or neglect involving the common client as the alleged perpetrator.
 - When the purpose of the request is to ensure the safety and protection of a child, CD will exchange written and/or verbal confidential information specifically relating to child protection with designated Probation and Parole staff as requested.
 - Do not share identifying information on the reporter.

3. Legal Representatives of the Parent or Guardian:

- a. Staff should make available to legal representatives of the parent(s) or guardian(s) records relevant to the allegations in the petition. Within ten (10)

days of the protective custody hearing or within fourteen (14) days of the filing of the petition or motion to modify, the Children's Division and juvenile officer must allow for certain records to be made available to all parties. The records may include:

- Medical records of the juvenile;
- Written statements, videotapes, and audiotapes regarding the juvenile and or parents/guardians;
- Reports and affidavits submitted by the Children's Division to the juvenile office recommending protective custody or a petition to be filed;
- Completed CD reports and safety plans;
- Written service agreements; and
- Completed hotline reports, redacted as required by law. If the hotline report is not completed by the timeframes set forth in the initial court hearing, the report should be made available upon completion.

Legal Proceedings:

1. Share information regarding case activity with the court during a juvenile court hearing.
2. Cooperate with the Grand Juries and other courts conducting abuse/neglect or child protection proceedings. A subpoena is not necessary to provide testimony. However, staff may require a subpoena if they do not believe it is appropriate for them to testify.

Testify after stating to the Court; **"The record is confidential as prescribed by § 210.150 RSMo. and I may only disclose it if ordered to do so by the court."**

- If requested by someone who has access to the record, i.e., a parent, staff should provide the deposition, unless he/she does not believe it is appropriate and only if everyone present has statutory right to that information.

If a deposition is requested by a person who does not have statutory right to that information, or staff do not believe it is appropriate for them to provide a deposition, staff should send the request through supervisory lines to request assistance from the Division of Legal Services (DLS).

3. Do not release the name of the reporter to the court in the presence of any person **not** designated to have access to this name. If staff is requested to reveal the reporter's identity during a court proceeding:
 - a. Inform the court, "**The record is confidential as prescribed by § 210.150 RSMo and due to the Missouri Supreme Court's opinion in *State of Missouri vs. Tucker I* may not disclose the reporter.**" Staff should, if possible, request a recess to consult with the Division of Legal Services (DLS) during the court proceeding if asked to release the reporter's identity.
 - b. If the Court denies the request and orders staff to disclose the reporter's identity then staff must obey the order. In such situations, staff should notify their supervisor immediately after the court hearing. Supervisory staff should then notify DLS.
 - c. Document in the case record when ordered to release the reporter's identity.
4. Do not give Miranda warnings, as CD staff is not classified as law enforcement officials and do not have the alleged perpetrator in custody at the time of the investigation.
5. Do not claim privileged communication, as communications between Division staff and clients when conducting a CA/N investigation are not considered a privileged communication.

Related Subject: Section 7 Glossary [Privileged Communication](#)

- Reference: State vs. Brydon, Missouri Court of Appeals, Western Division. Cases involving issues other than those identified in this appeals decision may generate differing opinions in other courts. Thus, this interpretation can only apply to CA/N investigations.

Medical Examiner or Coroner:

Share a copy of the CA/N Investigation/Family Assessment report with the Medical Examiner or Coroner in the event a child has died as a result of child abuse/neglect.

Reporters of CA/N

Mandated Reporters:

Staff is required to contact mandated reporters within forty-eight (48) hours of the receipt of the report in order to ensure that full information has been received and to obtain any additional information or medical records, or both, that may be pertinent.

Division staff is required to initiate contact with every mandated reporter to provide feedback about the family within five (5) days of concluding the report. Earlier contact may be appropriate for feedback to the reporter prior to the conclusion. Contact should generally be made by phone or in person and should be documented in the record.

When the mandated reporter will continue to have on-going, professional contact with the family, he/she should be considered a multidisciplinary team member. The Division should share information that would be helpful for the reporter's efforts to offer support to the family.

The Division may share the following information:

1. The date the Investigation/Family Assessment was completed;
2. Conclusion of the Investigation/Family Assessment;
3. Facts utilized to reach the conclusion of the Investigation/Family Assessment;
4. Whether a referral for Family-Centered Services (FCS) or to other community services was made;
5. Treatment plan; and
6. Progress of the child/family.

Mandated reporters who will not have on-going, professional contact with the child/family may receive the following information verbally or in writing:

1. Date the Investigation/Family Assessment was completed;
2. Conclusion of the Investigation/Family Assessment; and
3. Facts utilized to reach the conclusion of the Investigation/Family Assessment.

Staff should exercise discretion as to how much information is shared depending on the mandated reporter's role with the family. Provide the information to the reporter as soon as possible after the investigation is completed.

Other Reporters (Permissive):

Any reporter who provides his/her name to the CA/N hotline shall be informed of their right to obtain information concerning the disposition of the report during their initial contact with the Children's Service Worker. If a permissive reporter requests information regarding the disposition of the report, this shall be made available within five days of the conclusion. The reporter may also receive, if requested, findings and information concerning the case. The release of information shall be at the discretion of the Director, based on the reporter's ability to assist in protecting the child or the potential harm to the child or other children in the family. The local office shall respond to the

request within forty-five (45) days. The Division may share the fact that the report is being/has been followed up.

Researchers:

Share information with any tenure-track or full-time research faculty member at an accredited institution of higher education, engaged in scholarly research, with permission of the Division Director. Prior to the release of any identifying information, the researcher must submit a plan for maintaining the confidentiality of the identifying information:

- a. Correspondence from the Division Director will be provided to staff involved in the research as to the release of identifying information.
- b. State purpose for the release of information and penalty for unauthorized dissemination of information (Class A Misdemeanor).
- c. Refer inquiries regarding proposed research projects to the Office of the Division Director. Pre-planning with the local office is appropriate prior to submission of final proposal to Division Director.

News Media, Legislators, Students, and the Public:

1. Share only information pertaining to statistics, theory, policy, and practice. Do not share specific information regarding client situations.
2. Section 106(b)(2)(B)(x) of the Child Abuse Prevention and Treatment Act (CAPTA) requires states provide for, upon request, the public disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality. The following minimum information shall be provided in such disclosure:
 - The cause and circumstances regarding the child fatality or near fatality.
 - The age and gender of the child.
 - Information describing any previous reports of child abuse or neglect that are pertinent to the abuse or neglect that led to the child fatality or near fatality.
 - Information describing any previous investigations pertinent to the abuse or neglect that led to the child fatality or near fatality.
 - The result of any such investigations.
 - The services provided by the State and actions of the State on behalf of the child that are pertinent to the child abuse or neglect that led to the child fatality or near fatality.

With approval by the Director of Social Services, exceptions to the release of information are allowed:

- in order to ensure the safety and well-being of the child, parents, and family;
- when releasing the information would jeopardize a criminal investigation;
- when releasing the information would interfere with the protection of those who report child abuse or neglect or harm; or when releasing the information would harm the child or the child's family.

All inquiries shall be referred to Central Office.

Physicians or Designated Agents:

1. Share appropriate information with a physician or designated agent who reasonably believes that the child being examined may be abused or neglected.

Unsubstantiated reports and Family Assessment cases may only be shared with the consent of the child's legal representative or parent/guardian. During a Family Assessment, information may be shared without the parents' permission.

2. State purpose for the release of the information and penalty for unauthorized dissemination of information (Class A Misdemeanor).

Law Enforcement Officials or Prosecuting Attorney:

1. Report child's injuries or disabilities from abuse or neglect to law enforcement authority, if appropriate.
2. Determine, based on specific case situations, to whom such information shall be supplied.
3. Share information including reporter's name, if appropriate and necessary, to conduct a co-investigation.
 - In any event, the juvenile officer must be notified.
4. Share any record with law enforcement or the prosecuting attorney, including conclusions of Preponderance of Evidence, Probable Cause, Unsubstantiated reports, and Family Assessment cases.

Interdisciplinary/Multidisciplinary Teams:

1. Investigative/Family Assessment Teams
 - a. Share appropriate information, including reporter's name, if appropriate and necessary, with team members without consent of subjects.

- b. Advise team members of confidentiality restrictions and penalties with respect to information they receive.
 - c. Advise team members that information they provide may become available to client.
2. Treatment/Evaluation Teams of Child Abuse and Neglect Cases
- a. Share information, including reporter's name, if appropriate and necessary, with team members who are directly involved in the treatment of subjects without written consent of subjects.
 - b. Unsubstantiated reports and Family Assessment cases may be provided to treatment teams with the consent of the parent, guardian or legal representative of the child.
 - c. Advise team members of confidentiality restrictions and penalties with respect to information they receive.
 - d. Advise team members that information they provide may become available to client.
3. Family Support Team when discussing information obtained from a report of child abuse and neglect
- a. Share appropriate information.
 - b. Obtain signed confidentiality statement from each non-agency team member.
4. Child Fatality Review Panels
- a. Share all records including unsubstantiated reports and Family Assessment cases, including reporter information if necessary.
5. Domestic Violence Shelter/Service Providers
- a. Staff within domestic violence shelters is bound by more stringent confidentiality and release of record statutes. Therefore, it may be necessary for shelter staff to obtain a signed release of information from the adult victim prior to sharing information.

Multidisciplinary Provider

Share appropriate information, if provider of professional treatment services for a specified child is under contract with the Division. If provider is not under contract with the Division, obtain the parents' permission to release information. Unsubstantiated and Family Assessment reports may only be shared with the consent of the parent, guardian,

or legal representative of the child. During a Family Assessment, information may be shared without the parents' permission.

Visual or Aural Recordings of Child Victims

Pursuant to Section 510.035, RSMo., any visual or aural recordings or photographs of a minor who is alleged to be the victim of an offense under Chapter 566, RSMo. created by or in possession of a child assessment center (CAC), health care provider, or multidisciplinary team member shall not be copied or distributed to any person or entity, unless required by supreme court rule 25.03 or if a court orders such copying or distribution upon a showing of good cause after notice and a hearing and after considering the safety and privacy interests of any victim.

The following may access or share any copies of visual or aural recordings or photographs:

- Multidisciplinary team members (MDT) as part of an investigation, as well as for the provision of protective or preventive social services for minors and their families. For the purpose of Section 510.035, RSMo, multidisciplinary team members shall consist of representatives of law enforcement, the Children's Division, the prosecuting attorney, the child assessment center (CAC), the juvenile office, and the health care providers;
- Department of Social Services (DSS) employees and their legal counsel as part of the provision of child protection as described in Section 210.109, RSMo., as well as for use in administrative proceeding as established by Department regulations or through the administrative hearing commission as provided under Section 621.075, RSMo.;
- Department of Mental Health (DMH) employees and their legal counsel as part of an investigation conducted under Section 630.167, RSMo, as well as for use in administrative proceedings as established by Department regulations or through the administrative hearing commission as provided under Section 621.075, RSMo.;
- The Office of Child Advocate (OCA) as part of a review under Section 37.710, RSMo.;
- The Child Abuse and Neglect Review Board (CANRB) as part of a review under Sections 210.152 and 210.153, RSMo.; and,
- The attorney general as part of a legal proceeding.

If a court orders the copying or distribution of visual or aural recordings or photographs the order shall:

- Be limited solely to the use of the recordings or photographs for the purposes of a pending court proceeding or in preparation for a pending court proceeding;
- Prohibit further copying, reproduction, or distribution of the recordings or photographs; and,

- Require, upon the final disposition of the case, the return of all copies to the health care provider, CAC, or MDT that originally had possession of the recordings or photographs, or provide an affidavit that all copies have been destroyed.

Interstate Requests

Share appropriate information from Preponderance of Evidence or Probable Cause records without consent of subject with an out-of-state protective service agency if it can be determined that the information has been requested as the result of a report of CA/N and is necessary to determine the disposition of the investigation.

Unsubstantiated and Family Assessment records may not be shared without an authorization for release of information signed by the client.

Family histories or information regarding treatment with a particular client requires an authorization for release of information by the client. This does not apply to requests for studies for family resource providers or when the requesting agency provides a court order documenting that they have legal custody of the child.

Other CD Employees

Share with appropriate CD staff only that information which they must have to perform their specific duty (i.e., staff conducting administrative hearings, licensing staff, monitoring staff, legal staff, etc.)

Sharing is not to be done over lunch, coffee break, or in halls or elevators where names may be overheard by others.

Child Caring Facilities

Requests from the Chief Administrative Officers of facilities listed below for a CA/N review on any employee, volunteer, or prospective employee or volunteer should be made in writing to the Deputy Director of Children's Division. These screenings are conducted by the Background Screening and Investigation Unit (BSIU), based in Central Office. The response shall not include any identifying information regarding any person other than the alleged perpetrator:

1. Any child care home;
2. Any child care center;
3. Any child placing agency;
4. Any residential care facility, including group homes;
5. Juvenile courts, public or private elementary schools, public or private secondary schools, or any other public or private agency exercising temporary supervision over a child or providing or having care or custody of a child;

6. Any state agency when that agency is following statute which requires a license of any person, institution, or agency which provides care for, or services to children; and
7. Agencies or businesses which provide training, place or recommend persons for employment or volunteers, in positions where they will provide services or care for children.

Individual Requests – Child Care Facilities

Individuals may inquire regarding a specific child caring facility, child placing agency, residential care facility, public and private elementary and secondary schools, juvenile court, or other state agency. Information available is limited to the category of abuse/neglect, the conclusion (Preponderance of Evidence, Probable Cause or Reason to Suspect, and Court Adjudicated only) and shall not include any identifying information pertaining to any person contained in the report. It is appropriate to release the above information regardless of whether the facility or an employee of the facility or school is named as perpetrator. Individuals will obtain this information from the local county office.

Individuals should be referred to Department of Health and Senior Services (DHSS), Child Care Licensing, or the Residential Program Unit (RPU) to review the public record on any licensed facility. In addition, child care licensing through the DHSS, has resource and referral agencies which can supply information on child care facilities.

If an employer inquires about an employee who has a substantiated report, particularly asking for recommendations regarding personnel action, staff should tell the employer the Division does not make such recommendations and cannot discuss the report with them. Their employer should be referred to the Department of Health and Senior Services, Child Care Licensing, or Residential Program Unit staff.

Schools

Section 210.167 of the Child Abuse Law, states that when Section 167.031 RSMo. (Mandatory school attendance) is violated, i.e., Preponderance of Evidence or Probable Cause Educational Neglect findings, (or Family Assessment Services Needed) the following should occur:

Send Preponderance of Evidence, Probable Cause, (and Family Assessment Services Needed) reports to the school district in which the child resides. The school district may refer public school violations of Section 167.031 to the prosecuting attorney:

- a. Send a copy of the completed investigation (or Family Assessment) when educational neglect is the only basis for our involvement (with the reporter's name blanked out); or

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- b. Send a summary of the completed report when the report involves other allegations and findings (omitting the reporter's name).

Penalty for Unauthorized Dissemination of Information

Staff shall advise any requestor of the purpose for which the information is being released, that such information shall be used only for the purpose for which the information was released, and of the penalties for unauthorized dissemination of information (Class A Misdemeanor) Section 210.150.1, RSMo.

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2.2 Treatment Records

Persons served, who has a right to access his/her case record include:

- Any subject for whom a record exists. This will usually be the parent/caretaker in whose name a record has been established;
- The parent of the children in the Family-Centered Services treatment case, provided he/she only receives the child's record(s).

Policy also allows the subject to designate an attorney to act on his/her behalf in obtaining treatment records. The attorney must provide written authorization from the subject that allows access to the case record. However, Supreme Court Rule 123.08 requires the Children's Division and the Juvenile Officer to provide access to records and information within specific time frames without a formal discovery request. Within ten (10) days of the protective custody hearing or within fourteen (14) days of the filing of the petition or motion to modify, the Children's Division and Juvenile Officer must allow for certain records to be made available to all parties. The records may include the following and should be relevant to the allegations in the petition:

- Medical records of the juvenile;
- Law enforcement records, including incident reports. If information regarding an active investigation is requested, CD staff should request permission from law enforcement to release the information. If law enforcement will not approve the release due to an active investigation, CD should notify all parties that the information cannot be released at this time;
- Written statements, videotapes, and audiotapes regarding the juvenile and or parents/guardians;
- Reports and affidavits submitted by the Children's Division to the juvenile office recommending protective custody or a petition to be filed;
- Completed CD reports and safety plans;
- Written service agreements; and
- Completed hotline reports, redacted as required by law. If the hotline report is not completed by the timeframes set forth in the initial court hearing, the report should be made available upon completion.

CD must also make available to all parties any new relevant information related to the allegations obtained within ten (10) days of receipt of the request. This rule only requires CD to make available completed documents in their case record. The rule does not require CD to request additional records not currently in its possession for any other party.

Staff are not required to have a release of information form signed by the parents to release information related to the allegations pursuant to a request made under this rule as long as there is an order of appointment by the court or entry of appearance made by the attorney. However, a signed release of information form is required to release confidential materials regarding the parents' protected health information or materials not covered in the rule. When receiving drug and alcohol treatment material, staff will need to ask the provider if the information is covered under the federal drug and alcohol statutes.

The rule does **not** require CD to make copies of the information. Staff may schedule an appointment for the party to review the relevant information in the record. If the party or attorney would like copies of the documents, they may provide a written or verbal request. If copies of the information are requested, the Children's Division must follow the timeframes established in this rule as this rule supersedes the CD policy which allows ten (10) days to prepare the case file. Only one copy per party will be made. Any additional copies will be made at the expense of the person requesting the copy.

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2.3 Family-Centered Out-of-Home Case Records

The following persons may have access to information contained in out-of-home case records:

- A parent may have access to their own record (the case record that is established under their name);
- A parent may have access to the record which has been established for their child in out-of-home care;
- The child in the custody of CD in whose name a case record has been established. If there is a particular concern regarding the child's access to the record, the Children's Service Worker shall seek guidance through supervisory channels;
- The child in the legal custody of another person where the court has ordered CD to supervise. The Children's Service Worker shall contact the legal custodian to determine if it is appropriate for the child to view the record;
- The out-of-home care provider may have access to the record which has been established for a child in the custody of CD when the child is placed in the out-of-home care provider's home or facility;
- An emancipated minor, or person over age 18, may have access to the record that was established for him/her while in out-of-home care; and
- This person may also have information from the parent's records for the time period the child received services prior to, during, and following the placement.

Supreme Court Rule 123.08 requires the Children's Division and the Juvenile Officer to provide access to records and information within specific time frames without a formal discovery request. Within ten (10) days of the protective custody hearing or within fourteen (14) days of the filing of the petition or motion to modify, the Children's Division and Juvenile Officer must allow for certain records to be made available to all parties. The records may include the following and should be relevant to the allegations in the petition:

- Medical records of the juvenile;
- Law enforcement records, including incident reports. If information regarding an active investigation is requested, CD staff should request permission from law enforcement to release the information. If law enforcement will not approve the release due to an active investigation, CD should notify all parties that the information cannot be released at this time;
- Written statements, videotapes, and audiotapes regarding the juvenile and or parents/guardians;

- Reports and affidavits submitted by the Children's Division to the juvenile office recommending protective custody or a petition to be filed;
- Completed CD reports and safety plans;
- Written service agreements; and
- Completed hotline reports, redacted as required by law. If the hotline report is not completed by the timeframes set forth in the initial court hearing, the report should be made available upon completion.

CD must also make available to all parties any new relevant information related to the allegations obtained within ten (10) days of receipt of the request. This rule only requires CD to make available completed documents in their case record. The rule does not require CD to request additional records not currently in its possession for any other party.

Staff are not required to have a release of information form signed by the parents to release information related to the allegations pursuant to a request made under this rule as long as there is an order of appointment by the court or entry of appearance made by the attorney. However, a signed release of information form is required to release confidential materials regarding the parents' protected health information or materials not covered in the rule. When receiving drug and alcohol treatment material, staff will need to ask the provider if the information is covered under the federal drug and alcohol statutes.

The rule does **not** require CD to make copies of the information. Staff may schedule an appointment for the party to review the relevant information in the record. If the party or attorney would like copies of the documents, they may provide a written or verbal request. If copies of the information are requested, the Children's Division must follow the timeframes established in this rule as this rule supersedes the CD policy which allows ten (10) days to prepare the case file. Only one copy per party will be made. Any additional copies will be made at the expense of the person requesting the copy.

Chapter Memoranda History: (prior to 01-31-07)

[CS03-07](#), [CD04-79](#), [CD05-25](#), [CD06-07](#), [CD06-27](#), [CD06-75](#)

Memoranda History:

CD09-129

2.4 Procedures for Sharing Information

Section 210.150 RSMo defines individuals who may receive copies of records from the Central Registry. Those records may include child abuse/neglect (CA/N) investigations with a final determination of court adjudicated (including criminal convictions and/or juvenile court findings which arise from the facts of the CA/N investigation), preponderance of evidence, or probable cause. The Division also allows for subjects of reported concerns to request access to, or a copy of, unsubstantiated investigations, family assessments and non-CA/N referrals. Specific considerations and exceptions are outlined below.

Related Subject: Section 5 Chapter 2.1 CA/N Investigations
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Release of Records When There Are No Exceptions Due to Court Involvement

The following outlines steps and processes whereby a “subject”, or his/her attorney, may request and receive a copy of the record to which they are entitled:

1. The Division receives request by telephone, letter or in person, to view the record from a “subject” or his/her attorney.
 - Explain in writing, in-person, or by telephone that an appointment may be made to view the record or a copy of the record may be provided to the “subject” or his/her attorney.
 - Staff should clarify with the subject whether he/she wants to review the record on a specific incident, or also prior incidents, in order to adequately prepare the record.
 - Staff may allow immediate access to the subject or his/her attorney if the case is prepared. However, if the case is not ready, set a specific appointment within ten (10) working days and request that the subject contact the office if he/she does not intend to keep the appointment. However, this ten (10) day rule does not apply if the request falls under Supreme Court Rule 123.08 as seen below.

In most situations a copy of the record will be given to the subject or attorney in person. A copy of the record will be made available upon request. CD will furnish one copy of the record. Any additional copies will be made at the expense of the person requesting the copy.

- Exceptions which allow mailing a copy include:
 - the subject lives out of state and is not able to pick up a copy,
 - incapacitation of the subject; or,
 - other reasons in the judgment of CD staff which preclude the subject from picking up a copy.

- The envelope in which the copy is mailed shall be marked “CONFIDENTIAL”.
 - A cover document for the released record shall contain the following statement:

“Do Not Re-Release This Confidential Document To Anyone Even If They Are Also Authorized To Obtain A Copy Of This Document From The Division. Please Direct All Requests For Confidential Records To The Children’s Division.”
 - A subject’s attorney must have a written letter of authorization signed by the subject prior to the release of the information, unless a court order has been issued which authorizes release of the information to the attorney. Retain the authorizing document in the case record.
2. Division staff should copy the CA/N record and redact all identifying information regarding the reporter or other information covered by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, prior to allowing a subject, or his/her attorney, to review or receive a copy of the CA/N.
 3. If, the subject, or his/her attorney, comes to a local office by appointment, he/she must present adequate identification prior to seeing the record.
 4. Document within one (1) working day, in the case narrative the time, place and person with whom the record was shared and material copied.
 5. Notify the custodial parent if a non-custodial parent requests to view the record.
 6. Information in the case record will be shared with minor children in accordance with the following guidelines:
 - If the child is in the custody of the Children’s Division, CD has the right to determine if the child should see the record. Division staff may request guidance from the court if there is a particular concern.
 - If the child is in the legal custody of another person (i.e., parent, guardian) contact that person to determine whether they want the child to view the record.
 -
 7. Staff should determine if release of identifying information for any person named in the report, such as the child, a parent/guardian, witness, or collateral may place a person’s life or safety in danger:

- During the investigation, staff should document in the record if there are situations, involving the persons named above, that may place danger if the information is released to any person with a right to the information.
- In addition, staff should document in the record if they become aware of situations that may place a person named in the report in danger. This may include awareness of domestic violence, ex-parte orders, or other situations which verify a potentially dangerous situation.
- The county designee shall use judgment, based on the above, regarding non-release of identifying information. Document in the record the reasons for not releasing the identifying information along with any available verification.

Release of Records When There Are Pending Criminal Charges

When an alleged perpetrator requests a release of records, the redacted records must be released, except in a very limited set of circumstances as described below:

- **An alleged perpetrator shall have access to appropriately redacted CA/N investigative records in the following situations under Sections 210.150.2(5) and 210.150.3(3) RSMo:**
 - There is a pending criminal investigation but no formal criminal charges have been filed in court;
 - The alleged perpetrator has been indicted for a misdemeanor;
 - The alleged perpetrator has been charged with a misdemeanor by the filing of an information;
 - The alleged perpetrator has been charged with a felony by indictment; or,
 - The alleged perpetrator has been charged with a felony by the filing of a criminal complaint in court arising out of the facts and circumstances identified in the investigative records, and the felony complaint has resulted in an information after a preliminary hearing has been held or the alleged perpetrator has waived preliminary hearing and information and the case has been bound over for trial.
- **An alleged perpetrator shall not have access to hotline CA/N investigative records under Sections 210.150.2(5) and 210.150.3(3) RSMo in cases where the following applies:**
 - The perpetrator has been formally charged with a felony by the filing of a criminal complaint in court arising out of the facts and circumstances identified in the investigative records; and,
 - The felony complaint has not yet resulted in an information after a preliminary hearing and the preliminary hearing has not been waived.
- **Division staff may still redact in appropriate cases:**

- Protected Health Information (PHI) as outlined in the Child Welfare Manual at [Section 5 Chapter 2.7 Health Insurance Portability and Accountability Act \(HIPAA\)](#);
- The information which would identify a hotline reporter;
- Any “identifying information” when the Division determines that a person’s life or safety may be in danger. The Division must document this decision with clearly stated facts that disclosure of identifying information would endanger a person’s life or safety; and,
- Any other information which may be required to be redacted as provided by law.

Release of Records When There is Juvenile Court Involvement

Supreme Court Rule 123.08 regarding informal discovery in juvenile court requires the Children’s Division and the Juvenile Officer to provide access to records and information within specific time frames without a formal discovery request. Within ten (10) days of the protective custody hearing or within fourteen (14) days of the filing of the petition or motion to modify, the Children’s Division and Juvenile Officer must allow for certain records to be made available to all parties. The records may include the following and should be relevant to the allegations in the petition:

- Medical records of the juvenile;
- Law enforcement records, including incident reports. If information regarding an active investigation is requested, CD staff should request permission from law enforcement to release the information. If law enforcement will not approve the release due to an active investigation, CD should notify all parties that the information cannot be released at this time;
- Written statements, videotapes, and audiotapes regarding the juvenile and or parents/guardians;
- Reports and affidavits submitted by the Children’s Division to the juvenile office recommending protective custody or a petition to be filed;
- Completed CD reports and safety plans;
- Written service agreements; and
- Completed hotline reports, redacted as required by law. If the hotline report is not completed by the timeframes set forth in the initial court hearing, the report should be made available upon completion.

CD must also make available to all parties any new relevant information related to the allegations obtained within ten (10) days of receipt of the request. This rule only requires CD to make available completed documents in their case record. The rule does not require CD to request additional records not currently in its possession for any other party.

The Supreme Court rule does not supersede HIPAA and other statutes and regulations which govern the confidentiality of information in the hands of the Children's Division. Information which may be confidential and may need to be redacted may include:

- Information which would identify the reporter of a hotline call;
- Protected health information of persons other than the child in CD's custody, such as parents, grandparents and other third parties (e.g. medical records, therapy records);
- Investigative reports prepared by law enforcement of active criminal investigations;
- Federally protected, confidential information relating to the testing, diagnosis and treatment for substance abuse.

It is therefore very important to make certain that any information provided under this rule is reviewed and appropriate redactions made before the information is released. If staff have any concerns about what information needs to be redacted they should contact the Children's Division's privacy officer. If the privacy officer is unable to resolve the question a referral for legal advice should be made to the Division of Legal Services, DLS.

Staff are not required to have a release of information form signed by the parents to release information related to the allegations pursuant to a request made under this rule as long as there is an order of appointment by the court or entry of appearance made by the attorney. However, a signed release of information form is required to release confidential materials regarding the parents' protected health information or materials not covered in the rule.

The rule states that CD must make these materials **available** for all parties, thus staff should have their case files ready for review within the specified timeframes. Parents without representation also have access to these records and staff should notify parents of this right at the protective custody hearing. It may also be beneficial for staff to put information regarding this rule in the parent pack that is provided to the parents at the time of custody. This information has also been added to the [Handbook for Parents of Children in Alternative Care](#), CS-304.

The rule does **not** require CD to make copies of the information. Staff may schedule an appointment for the party to review the relevant information in the record. If the party or attorney would like copies of the documents, they may provide a written or verbal request. If copies of the information are requested, the Children's Division must follow the timeframes established in this rule as this rule supersedes the CD policy which allows ten (10) days to prepare the case file. Only one copy per party will be made. Any additional copies will be made at the expense of the person requesting the copy.

2.4.1 Exceptions to a Person's Right of Access

Access to case record information by a subject may not be in the best interest of the child/family if any of the following situations exist:

- Repeated harassment calls by a parent or spouse;
- Documentation of previous physical abuse by a parent or spouse;
- Documentation of domestic violence in household and/or threat or risk of harm to child(ren) and/or adult victim;
- Knowledge of criminal action by parent or spouse;
- Pending litigation such as dissolution of marriage.

Determine, with supervisory consultation, that there is a valid reason to believe that access to information by a “subject” could reasonably be detrimental to the physical or emotional well-being of the child or family group. With the Regional Director’s approval, withhold information and document the reason(s) in the narrative section if above circumstances exist.

Statute 211.321, RSMo. prohibits Juvenile Court Records and Law Enforcement records from being open to inspection, except by order of the court or under the requirements of Supreme Court Rule 123.08. Information received from the Juvenile Court and Law Enforcement that is included in CD family records will not be shared with the subjects, attorney, or their designee. The subject, their designee, or attorney requesting this information shall be referred to the Juvenile Court or Law Enforcement Agency to obtain a copy of these materials.

Federal law prohibits the release of information which is obtained from a federally funded drug/alcohol facility. This information shall not be released to any individual or agency, except a child fatality review team, without written consent of the individual receiving treatment, the agency providing the service, or a court order. When receiving drug and alcohol treatment material, staff will need to ask the provider if the information is covered under the federal drug and alcohol statutes.

If an employer inquires about an employee who has a CA/N report with a “Preponderance of Evidence” or “Probable Cause” finding, asking particularly for recommendations regarding personnel action, staff should tell the employer the Division does not make such recommendations and cannot discuss the report with them. The employer should be referred to the Department of Health and Senior Services, Child Care Licensing, or Residential Program Unit staff.

- If the subject or his/her attorney wishes to read the record in the office, this should be done in privacy, but in the presence of the local office designee.

- The initial copy of the record will be furnished at the expense of CD. If additional copies are needed by the subject, he/she should use their copy to make copies at their own expense.

2.4.2 Duty to Warn

At any time a worker has concerns regarding the safety of a child, another person, self, or agency staff, and there is a foreseeable danger or a threat to harm exists, the worker shall immediately assess and analyze the risk of the threat **with their supervisor or Circuit Manager**.

The analysis should determine:

- Does the person have the ability to carry out the threat immediately or in the future?
- What is the nature of the threat and is it specific?
- Does the threat identify a specific person or group?
- Does the agency have past information on the person carrying out the threat?

If it is determined the threat is imminent, the worker should document in the case record the facts supporting the decision to report the threat. The worker and supervisor need to determine if releasing the information would be a breach of confidentiality based on the Health Insurance Portability and Accountability Act (HIPAA) regulations and Protected Health Information (PHI), and according to 210.150 RSMo., which addresses confidentiality. Disclosure of personal health information (PHI) is permissible when there is an imminent threat to public safety. Disclosure of PHI must meet the minimum necessary standard, in that only that information necessary to the reporting of the threat should be disclosed. Except in situations where the supervisor is unavailable and the imminent nature of the threat requires otherwise, the supervisor should be involved in making the calls to the person(s) and authorities:

Related Subject: Section 5.2.7 Health Insurance Portability and Accountability Act (HIPAA);; Section 7 Glossary / Reference

- If the threat to harm is made to *another agency employee* staff should follow the procedures in the [DSS manual Threat to Employees 3-301](#). (Employee Access Only.)
- If the threat is regarding a **non-agency person**, and the worker, supervisor and/or Circuit Manager have determined there is imminent risk of harm, the following steps should be taken:

1. Contact the person or ascertainable group and disclose the nature of the threat. Reasonable steps should be made to **directly** contact the person(s) in imminent danger. The CSW should “disclose the least amount of confidential information necessary to achieve the desired purpose (NASW Code of Ethics).” **Leaving a message or writing a letter are not acceptable methods of notification.**
2. Make reasonable efforts to notify law enforcement.
3. Thoroughly document date, times, subject and content of **all** contacts in the case record.

Reporting Criminal Behavior

Staff must also report any criminal behavior, acquaintance and statutory rape to law enforcement as soon as such is known.

Chapter Memoranda History: (prior to 01-31-07)

[CS03-07](#), [CD04-79](#), [CD05-25](#), [CD06-07](#), [CD06-27](#), [CD06-75](#)

Memoranda History:

CD09-129; CD11-43

2.5 Other Persons/Agencies Entitled to Case Record Information

Release of Information is Prohibited Except as Applied in the Following Guidelines:

2.5.1 Individuals

CA/N Investigation Records

Section 210.150(3), RSMo, allows the subject of a report access to the family record, and allows the subject to designate an attorney or name a designee in his/her behalf. **The name of the CA/N reporter must not be released.** A written authorization from the subject is required to share information with an attorney or designee unless the information falls under Supreme Court Rule 123.08 which requires the Children's Division and the juvenile officer to provide access to records and information within specific time frames without a formal discovery request. Within ten (10) days of the protective custody hearing or within fourteen (14) days of the filing of the petition or motion to modify, the Children's Division and juvenile officer must allow for certain records to be made available to all parties. The records may include the following and should be relevant to the allegations in the petition:

- Medical records of the juvenile;
- Law enforcement records, including incident reports. If information regarding an active investigation is requested, CD staff should request permission from law enforcement to release the information. If law enforcement will not approve the release due to an active investigation, CD should notify all parties that the information cannot be released at this time;
- Written statements, videotapes, and audiotapes regarding the juvenile and/or parents/guardians;
- Reports and affidavits submitted by the Children's Division to the juvenile office recommending protective custody or a petition to be filed;
- Completed CD reports and safety plans;
- Written service agreements; and
- Completed hotline reports, redacted as required by law. If the hotline report is not completed by the timeframes set forth in the initial court hearing, the report should be made available upon completion.

CD must also make available to all parties any new relevant information related to the allegations obtained within ten (10) days of receipt of the request. This rule only requires CD to make available completed

documents in their case record. The rule does not require CD to request additional records not currently in its possession for any other party.

The Supreme Court rule expressly does not supersede HIPAA and other statutes and regulations which govern the confidentiality of information in the hands of the Children's Division. Information which may be confidential and may need to be redacted may include:

- Information which would identify the reporter of a hotline call;
- Protected health information of persons other than the child in CD's custody, such as parents, grandparents, and other third parties (e.g. medical records, therapy records);
- Investigative reports prepared by law enforcement of active criminal investigations;
- Federally protected, confidential information relating to the testing, diagnosis, and treatment for substance abuse.

It is therefore very important to make certain that any information provided under this rule is reviewed and appropriate redactions made before the information is released. If staff have any concerns about what information needs to be redacted they should contact the Children's Division's privacy officer. If the privacy officer is unable to resolve the question a referral for legal advice should be made to the Division of Legal Services (DLS).

Staff are not required to have a release of information form signed by the parents to release information related to the allegations pursuant to a request made under this rule as long as there is an order of appointment by the court or entry of appearance made by the attorney. However, a signed release of information form is required to release confidential materials regarding the parents' protected health information or materials not covered in the rule.

Section 210.150(3), RSMo, also provides that "a parent or guardian" of a child who is the subject of a CA/N report has access to the information about the child with the limitation that the name of the reporter cannot be released.

When a Child is in Custody or Under Supervision of the Division

Under Section 211.321, RSMo., persons having a legitimate interest in securing information about a specific child in the custody or under the supervision of the Division must secure the permission of the juvenile court holding jurisdiction for the information to be released.

Related Subject: Section 5, Chapter 2.4 [Procedures for Sharing Information](#)

Treatment Cases

The **subject for whom the record exists** must provide written authorization to share the contents of the treatment record except for the stipulations listed in Supreme Court Rule 123.08 as explained above.

2.5.2 Courts and Law Enforcement

Juvenile Courts

Information is shared without a subpoena with appropriate juvenile court personnel and attorneys who represent the court. However, Section 509.520 RSMo. went into effect on August 28, 2009. The law states that any pleadings, attachments, or exhibits filed with the court in any case, should not include: the full Social Security number, the full credit card number, or other financial account number of any party or any child who is the subject to an order of custody or support.

We may share criminal history results with the juvenile court if the reason for sharing matches the purpose stated on the criminal history report, i.e. for the purpose of finalizing an adoption or guardianship.

We may also share results with the court on criminal history background checks completed on biological parents/legal guardians for the purpose of reunification as long as that is the stated purpose. Parents may also obtain records themselves; however, the court may question their validity.

The Guardian ad Litem, when appointed to appear for and represent the child, and with proper identification, may have access to the same information as the juvenile court.

Volunteer advocates, who are designated by the court, shall be provided with all reports relevant to the family and shall have access to all records relating to the child or his family members.

Courts in Missouri Other than Juvenile Courts

Staff shall appear in courts outside juvenile court if a subpoena has been served for the person and/or the record. (Subpoenas for the record are addressed to the Circuit Manager)

- Upon being called to testify, staff should state to the judge the following: **"The information in the record is confidential as provided by [Section 210.150](#) of the Revised Statutes of Missouri and I may only disclose it if ordered to do so by the court."**

If there are any questions about how to respond to a non-juvenile court subpoena, staff should seek assistance from the Division of Legal Services through supervisory lines.

When the person is subpoenaed, the individual may take the record and/or notes to court with a subpoena, but must be aware that the judge and/or the attorneys may view the record and/or notes and cross-examine on the entire contents.

The family record or a copy of it may be left with the court upon verbal order of the judge.

Upon return to the local office, the Children's Service Worker should complete an Inter-Office Communication (IOC) to the Circuit Manager with a copy for the family file including the following information:

- Identifying information;
- Date of the hearing; and
- A statement that the record was retained by the court upon its order in the hearing.

Criminal Charges

Criminal charges may be brought against a person with whom CD is working. In the course of prosecution, a CD record and/or worker may be subpoenaed.

The CD worker will fully cooperate with the court and testify if ordered to do so. See above for statement to be given to court before testifying.

Courts in Other States

Honor the subpoena only after consultation with the Division of Legal Services through supervisory lines.

Grand Jury Investigations

Section 210.150.2(6), RSMo. provides that information contained in CA/N records is available to Grand Juries.

Child Custody Proceedings

Section 210.150.2(6), RSMo., provides that the juvenile court or other court conducting abuse or neglect or child proceedings or child custody proceedings shall have access to investigation records contained in the central registry.

Medical Examiner or Coroner

In the event a child has died as a result of CA/N, a copy of the CA/N investigative report will be made available to the medical examiner or coroner.

Law Enforcement Officials or Prosecuting Attorney

Section 210.150.2(6), RSMo. provides that information contained in investigation records is available to a Grand Jury, juvenile officer, prosecuting attorney, law enforcement officer involved in the investigation of child abuse/neglect, juvenile court, or other court conducting abuse/neglect, child protective proceedings or child custody proceedings, and other federal, state, and local government entities, or any agent of such entity, with a need for such information in order to carry out its responsibilities under the law to protect children from abuse or neglect”

Section 210.145.4, RSMo. dictates that the “local office shall contact the appropriate law enforcement agency immediately upon receipt of a report which Division personnel determine merits an investigation and provide such agency with a detailed description of the report received. In such cases the local Division office shall request the assistance of the local law enforcement agency in all aspects of the investigation of the complaint. The appropriate law enforcement agency shall either assist the Division in the investigation or provide the Division, within twenty-four (24) hours, an explanation in writing detailing the reasons why it is unable to assist.”

The local CD office may report a child's injuries or disabilities from abuse or neglect to the juvenile officer. Each county office (at the direction of the Circuit Manager or designee) shall decide to whom such reports will be made, i.e., the local prosecuting attorney, law enforcement officials, or juvenile court.

Related Subject: Section 2 Chapter 4.1.7 Referral to Juvenile Court

2.5.3 CA/N Reporters

Mandated Reporters

The Division may share only the following information:

- Status and conclusion of the investigation;
- The fact that the Division is providing services or referring the family to other community services; and
- The fact that a referral is being made to the juvenile court, if applicable.

Other Reporters

The Division may only share the fact that the report is being/has been investigated.

2.5.4 Physicians

Section 210.150, RSMo., allows information to be made available to "a physician or his designee who has before him a child whom he reasonably believes may be abused or neglected."

When a physician calls the Child Abuse and Neglect Hotline Unit (CANHU) or local office for information, staff will call back and verify identity. They may then provide information regarding the child before him, and siblings of that child.

2.5.5 Researchers

Section 210.150, RSMo., allows information to be made available to "any person engaged in a bona fide research purpose with the permission of the Director." No identifying information shall be shared.

Any inquiries regarding proposed research projects are to be referred to the Division Director. Proposals must be submitted in writing for the Director's approval in coordination with the local office in which the project would take place. Pre-planning with the local office is appropriate prior to submission of the final proposal to state office.

2.5.6 News Media, Legislators, Students, and the Public

The Division receives many inquiries regarding specific situations or for general information.

It is appropriate to share statistics, theory, policy, and practice with anyone. This is general information with no identifying information regarding any specific client.

The Division does not share specific information regarding any family situation with the news media, legislators, public, or community groups (unless an individual is named as a designee by a subject) except relating to specific child recruitment for the purpose of finding an adoptive family. This sharing must be authorized by the juvenile court having jurisdiction over the child.

2.5.7 Interdisciplinary Teams

Section 210.150(2), RSMo., allows information to be made available to interdisciplinary teams which are formed to assist the Division in investigation, evaluation, and treatment of child abuse and neglect cases. This includes multidisciplinary providers under contract with the Division Children's Treatment Services (CTS) for a child referred to the provider.

Such individuals, officials, and agencies will be advised that the information they provide to the Division may become available to the family or its designee if they seek access to the family record.

2.5.8 Interstate Requests

Share appropriate information from final determination Preponderance of Evidence or Probable Cause records without consent of subject with an out-of-state protective service agency if it can be determined that the information has been requested as the result of a report of CA/N and is necessary to determine the disposition of the investigation.

Unsubstantiated and Family Assessment records may not be shared without an authorization for release of information signed by the client. Family histories or information regarding an individual's treatment requires an authorization for release of information by the client. This does not apply to requests for studies for family resource providers or when the requesting agency shows that they have legal custody of the child.

2.5.9 Other Division Employees

Information may be shared with appropriate Division staff, consultants, licensing representatives, monitoring, and legal staff.

Case record information may be shared with Division staff as part of a Peer Record Review (PRR), Practice Development Review (PDR), or any other review that may be part of the Continuous Quality Improvement process (CQI).

It must also be remembered that the Division and its employees have not only legal responsibility for confidentiality, but also ethical responsibility. The responsible handling of information dictates not only "what" we share and "to whom," but also "where." It is not to be done over lunch, coffee breaks, or in halls or elevators where names may be overheard by others. It must be remembered that the professional reputation of an agency is a collective reputation to which each individual contributes.

2.5.10 Minor Children

Information in the family record will be shared with minor children in accordance with the following guidelines:

- **If the child is in the custody of CD**, we have a right to determine if the child should see the record. We may want to request guidance from the court if there is a particular concern.

Title: Child Welfare Manual
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- **If the child is in the legal custody of another person** (i.e., parent, guardian), we should ask that person whether or not they want the child to view the record.
- **If the child is an emancipated minor**, we should, under the law, share the record.

Chapter Memoranda History: (prior to 01-31-07)

[CS03-07](#), [CD04-79](#), [CD05-25](#), [CD06-07](#), [CD06-27](#), [CD06-75](#)

Memoranda History:

[CD07-61](#); [CD09-112](#), CD09-129, CD16-49

2.6 Out-of-Home Care Provider Records

Records shall be established for the following out-of-home care providers who are licensed/approved, or under the supervision of CD:

- Foster family and large family resource homes;
- Relative or kinship providers;
- Respite care providers; and
- Adoptive families.

2.6.1 Foster Family, Relative, Kinship, and Respite Record Access

The licensing records of all resource provider homes are available to the public under Missouri's "Sunshine Law", which is Chapter [610 RSMo.](#) The information that may be released from a file includes:

- Assessment (with all health information, except the requestor's, redacted);
- Financial information as documented on the Financial Worksheet (except account numbers, Social Security numbers, etc.); and
- Home address and phone numbers (although phone numbers and addresses can sometimes be removed from the information released – this is done at the request of local staff with the approval from the Division of Legal Services);

The information contained within a provider file that is protected and may not be released would include:

- Protected health information (anything covered under HIPAA);
- Child Abuse/Neglect reports;
- Foster child information (at the request of biological parent, the information on their child can be released but not on the other children in the foster home); and
- Information on the provider's biological and/or adopted children.

Access to information on the suspension or revocation of a foster home license within the record is covered under [Chapter 210.498 RSMo.](#) The determination of whether license suspension or revocation information may be released should be made by the Division of Legal Services (DLS).

In order for a person to obtain a copy of a provider record, the person must make the request for a copy to their local Children's Division office. This request must be made in writing and the request must include the name of the provider. If they do not meet these criteria, they cannot receive a copy of the file.

Upon the request for a copy of the file, the local office will redact the file according to the following guidelines:

- Remove the fingerprint results.
- Remove documentation of CA/N check hits.
- Remove the Placement Report for Resource Home Record, CD-104.
- Black out all social security numbers.
- Black out any account numbers.
- Black out all health information.

If the requestor of the file is the individual of whom the file is regarding, it is not necessary to redact the personal information.

The redacted file is then sent to [Children's Division Privacy Officer](#) at Central Office in Jefferson City for review. If the request was a "Sunshine" request, the Privacy Officer will then forward the file to the Division of Legal Services for additional review.

Upon receipt of a Sunshine request for record release, staff are to send the request immediately by scan or by fax to the Department Privacy Officer and the Division Privacy Officer. Statute RSMo [610.023](#) requires response by the Department within three (3) days of the submitted request.

- Email correspondence between staff and providers is not protected information and therefore is accessible by the public.
- All email correspondence between staff and providers that pertains to licensing and supervision of the provider home **must** be kept in the record.
- It is important that all information contained in these emails is correct and applicable licensing and supervision issues.
- No personal or conversational correspondence should be in a business record.

- All other information included in the above case records is confidential and available only to the applicants and licensees.

For criminal history, the record may only be released to the individual named on the record.

- The person must make the request in writing and provide photo identification to receive a copy.
- They must also sign a statement stating they received a copy of their record. This statement should be maintained in their file.
- The Division may release records only to the person to whom it belongs.
- The Division also requires criminal history records on household members age 17 and those under 17 who have been certified as adults by the court. These records cannot be released to anyone other than the individual on whom the record was requested.
- The parent of the household may not receive copies of these individuals' records as they are considered adults.
- The Circuit Manager or designee must notify the foster parent(s) of the request for a copy of their record and by whom.

2.6.2 Adoptive Family Record Access

The Children's Service Worker shall inform adoptive parent(s), prospective or otherwise, of their right to view their adoptive records.

- Should an adoptive parent(s) request to view their record, the worker shall immediately acknowledge the receipt of their request with a letter including an appointment date and time to review the record no later than ten (10) working days from original date of request.
- At that appointment the Children's Service Worker shall verify the identity of the adoptive family and provide a private area for viewing. **Do not permit review of any identifying information or non-identifying information of child or biological family if the adoption has been completed and the child and adoptive parent(s)' records have been combined.**
- Background information about the child important to the child's placement should have been shared at the time of placement. If they wish confirmation of this information, complete the [CS-50](#) and follow the appropriate steps.

- The Children's Service Worker shall provide the adoptive family with a copy of the adoptive family assessment if they have never been given one.
- The worker will then document in the narrative, within five (5) working days, the time, place and person with whom the record was reviewed and/or material copied.

This does not affect the written procedures governing the summary of information shared with the prospective adoptive parent(s) at the time the child is placed.

2.6.3 Adopted Adult Requesting Identifying Information

This Procedure is Based on [453.121 RSMo.](#)

The adopted adult is the only person who can petition the court for a release of identifying information, unless the adopted adult is deceased, in which case lineal descendants may petition the court. "Lineal descendants" include adopted children and their descendants. (Section [472.010 RSMo.](#))

Any adopted adult whose adoption was completed in this state or whose biological parents had their parental rights terminated in the state may request the court to secure and disclose identifying information concerning a biological parent or an adult sibling.

When the adopted adult makes a written request to the court, identifying information about biological parents or siblings is released only by the court which granted the adoption.

The Circuit Court having original jurisdiction will:

1. Within ten (10) days notify in writing the child-placing agency of the request.
2. Within three (3) months after receiving notice of the request, the court will receive a report from the child-placing agency stating if the biological parents were located and given the required information.
3. Receive information from the child-placing agency if the biological parents were unable to be notified.
4. Disclose identifying information if the biological parent has filed a release with the court or if the biological parent is found to be deceased, the court will disclose identifying information as to that biological parent to the adopted adult, or the adopted adult's lineal descendants if the adopted adult is deceased, provided that the other biological parent is either:

- a. unknown;
 - b. known but cannot be found and notified;
 - c. deceased; or
 - d. has filed with the court an affidavit authorizing the release of information.
5. Disclose identifying information pertaining exclusively to the biological sibling upon consent of that biological sibling.
 6. Not accept additional requests for the same information within one year from the end of the (3) three month period, provided that the biological parents were unable to be notified, unless a good cause is shown and leave of court is granted.
 7. Not accept additional requests within (3) three years of the time the biological parent fails or refuses to give consent authorizing the release of identifying information.

The Children's Service Worker will:

1. Receive written notice from court that an adopted adult has made written request for release of identifying information about biological parents or siblings.
 - a. If appropriate, report to court that the information requested was made by an adopted adult who made a similar request less than (1) one year from the date of current request and the biological parent/siblings could not be located at the time of the previous request.
 - b. If appropriate, report to court that the adopted adult made a similar request within the last three (3) years and the biological parent/siblings refused to consent to the release of identifying information.

NOTE: [453.121, RSMo.](#), does not require another search until the above time frames have elapsed.

2. Review appropriate Division records to gather identifying information on adopted adult, biological parents, adoptive parents and biological siblings.
3. Make reasonable efforts to notify the biological parents or the biological siblings of the request of adopted adult through a

"confidential and personal" contact, which may include contact by telephone or face to face contact.

- a. Determine that either or both biological parents are deceased and document information source regarding this fact.
 - b. Determine that a biological parent is unknown, after review and search of adoption records and other materials, and document the information source regarding this information.
 - c. Determine that a biological parent is known, but cannot be located, and document the attempts to locate the specific biological parent.
 - d. Determine that the biological parent has previously filed an affidavit with the court, if the biological parent indicates this has been done, and obtain identifying information about the court receiving the affidavit.
 - e. Request assistance from another county office or state if biological parent is located out of state. Inform person contacted of need for confidential contact.
4. Inform the biological parent(s) at the time of notification of the following:
- a. A report to the court will be made which includes the following information:
 - The nature of the identifying information contained in Division records.
 - The nature of the non-identifying information contained in Division records.
 - The date of the request of the adopted adult.
 - That the Division has informed the biological parent of the necessity to file an affidavit with the court permitting the release of identifying information.
 - That the Division informed the biological parent of the effect of a failure to file an affidavit consenting to the release of identifying information.
 - b. The necessity to file an affidavit with the court which granted the adoption stating that the identifying information should be disclosed.

- c. That identifying information will not be released to the adopted adult if the affidavit is not filed with the court.
 - d. The identifying information will be released only by the court to the adopted adult.
 5. File report with the court at the end of three (3) months, or as soon as information is secured, which includes the following information:
 - b. That each biological parent was/was not located.
 - c. The nature of the identifying information requested.
 - d. The date of the request of the adopted adult.
 - e. The fact that the biological parent was informed of the right to file an affidavit with the court stating that identifying information should be disclosed.
 - f. The fact that the biological parent was informed of the effect of a failure to file the affidavit.
- NOTE: "Effect of a failure" is that identifying information cannot be released to the adopted adult.
- g. A summary of the discussion with each biological parent, if applicable.
 6. Record all activities in the case narrative within ten (10) working days in the adoptive parent(s) case record:
 - a. File copies of reports and other correspondence in the "Adopted Adult Information Request" section of the case record.

2.6.4 Release of Information in Adoptions:

2.6.4.1 Confirming the Identity of Individuals Requesting the Release of Information in Adoptions

The methods selected to confirm the identity should be appropriate to the category of the individual making the request for release of information, and might include:

- Requesting the individual to supply a copy of a birth certificate or viewing the birth certificate and recording in narrative the birth certificate number.

- Requesting the individual to supply a copy of the adoption decree or viewing the decree and recording the court file number.
- Requesting the individual to supply a copy of their driver's license.
- Viewing the legal papers awarded to the guardian(s) of the person when non-identifying information is requested.

2.6.4.2 Searching for a Biological Parent

Do not contact the attorney, physician, minister or priest, who assisted in the original consent for adoption or termination of parental rights. Contacts between these persons and biological parents are considered a privileged communication and are not available as an aid in searching for biological parents. (See definitions in [Section 7. Glossary / Reference.](#))

The definition of reasonable effort to notify biological parents includes:

- A minimum of two (2) calls (by telephone and/or in person at last known address) at varying times between 7:00 a.m. and 9:00 p.m. at the location if the Children's Service Worker believes the biological parent has been identified and located.
- It is preferred that contact not be made at their place of employment unless this is the only avenue available for the confidential notification.

Related Subject: Section 4, Chapter 4, Attachment A: Locating the Non-Custodial Parent
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Any or all of the following steps in attempting to locate biological parents should be taken until the Children's Service Worker believes that the parent(s) cannot be located. These steps include:

- Reviewing all information provided by the court regarding the request of the adopted adult;
- Contacting the court for release of any last known information the court may have, if the request from the court does not include information regarding the biological parent;
- Examine the Division's **internal** sources of information such as:
 - Income Maintenance family records and information via IM workers;
 - Food stamp records and information via those workers;

- Children's Services family records and information via those workers;
- Appropriate DSS system screens (i.e., SCLR, IBTH, IDTH AND IDSS); and

NOTE: Bureau of Vital Records information is for inquiry only and should not be printed, faxed or copied. Certified copies of Missouri records of birth, death and fetal death reports can be obtained by submitting a written request to:

Missouri Department of Health and Senior Services
Bureau of Vital Records
P.O. Box 570
Jefferson City, MO 65102

For more information regarding Missouri birth and death records go to: <http://www.dhss.mo.gov>

Click on "Birth, Death, Marriage, & Divorce Information: Then click "How do I request a vital record?"

- The Adoption Information Registry in central office.

NOTE: If the Social Security Number (SSN) is known, the registry staff can assist in identifying the state in which the parent was last known to be located. Requests can then be forwarded to the child welfare office in that state for assistance in locating a biological parent. Information in the request should include any last known identifying information regarding the biological parent (i.e., date and place of birth, parents' names and, if possible, the mother's maiden name).

- Examine **external** sources of information such as:
 - Postmaster: The local post office will have a form for requesting address information. This may be completed and sent to the postmaster of the post office serving the biological parent's last known address.
 - Public utilities: If previous address and name on account are known.
 - Directories: Telephone, city, street, trade, labor, and professional, etc.
 - Other public agencies in Missouri:

- Employment Security screens (IMES). Requests should be made to the local Employment Security office.
- Division of Motor Vehicles, Driver License Bureau. Complete the CD88 Request for Location Services form and submit to the designated staff in your region who has security clearance to complete the search.

Requests can also be made in writing to the Driver License Bureau, 301 West High Street, Jefferson City, MO 65101 on Division letterhead include the person's name, date of birth and last known address.

- Court/county records:

- County and city officials including recorders of deeds, county clerks, county commissioners, appraiser, collector, Board of Election, etc.

NOTE: The reason for the inquiry must not be released and workers are not required to give the reason since the above information is public and accessible to anyone.

- If the worker has reason to believe either of the biological parents are involved in any civil court proceedings, he/she may contact the local court to obtain the parent(s)'s last known address.
 - If the court refers the worker to the attorney, contact the attorney. The attorney will not disclose information without the client's consent; but, even in such cases, it may lead to a voluntary contact by the biological parent with the worker.
 - If the contact with the attorney does **not** produce the necessary information, the worker may make a contact with court again.
- Societies or lodges (Does not include church organizations).
 - Bureau of Indian Affairs.

- Requests should include all available identifying information about the adopted adult and the biological parents. Requests can be expedited if the tribe is known and included in the request. Requests on Division letterhead should be sent to:

Bureau of Indian Affairs
Eastern Area Office
1951 Constitution Ave., N.W.
Washington, DC 20245
(202) 343-5582

NOTE: Under Federal law an adopted Indian child at age 18 has the right, upon application, to be informed of the following: the tribal affiliation, if any; the names of the biological parents; and any other information necessary to protect any rights flowing from the individual's tribal membership.

- Missouri Department of Corrections, if you have reason to believe the biological parent is or ever has been in prison. Requests should be made to the facility holding the individual.
- Missouri Department of Mental Health, if you have reason to believe the biological parent has been or is currently a recipient of their services. Requests should be made to the last known facility.

2.6.5 Adopted Adult Requesting Non-Identifying Information

This Procedure is Based on [SUBSECTION 453.121, RSMo.](#)

All adopted adults, adoptive parent(s), or legal guardians will be given non-identifying information, if known, regarding the biological parents and siblings of the specific adopted child, who is the subject of the request, upon providing proper identification and, in the instance of an adopted adult request, proof of age (must be age 18 and over).

If the adopted adult is deceased, the adopted adult's lineal descendants may also receive non-identifying information concerning undisclosed biological parents or siblings. "Lineal descendants" include adopted children and their descendants. (Section [472.010 RSMo.](#))

Non-identifying information includes only:

- a physical description

- nationality
- religious background, and
- the medical history of the biological parents and/or sibling(s) contained in Division records

Section 453.121 does not authorize for release any other types of non-identifying information. See definitions for further guidance regarding medical history.

A written request via completion of form CS-50 is required.

Requests for non-identifying information should be referred to the circuit court if the local office is unable to identify that the adopted child, who is the subject of the request, was placed for adoption by the Division.

Release of non-identifying information is permitted on adoptions completed before and after August 13, 1986.

For closed adoption records, the Children's Service Worker would:

- Receive request for non-identifying information from adopted adult, adoptive parent(s) or legal guardian. See Children's Services Forms Manual, instructions for CS-50. Request for Release of Non-Identifying Information/Completed Adoptions.

NOTE: The adopted child does **not** have to be 18 years of age if adoptive parent(s) are requesting non-identifying information.

- Secure proof of identification of individual making request and proof of age, if adopted adult is making the request. See 2.6.4.1 for methods of securing proof. Refuse the request if the adopted individual is making the request and is unable to provide proof of being age 18 and over.
- Secure proof of identification from the lineal descendant by requiring additional documentation to verify the relationship of the requester to the adoptee such as:
 - Photocopy of state-issued birth certificate, or
 - Certified copy of a court document stating relationship.

A certified copy of the adoptee's state-issued death certificate is also required.

- Determine that record exists regarding the adopted adult who is the subject of the request.
- Make request of county holding the adoption record if it is determined that the adoption was completed in another county; or
 - Refer requestor to circuit court of residence of the adopted child if it is determined that the Division did not place the child.
- Prepare CS-50 with the available non-identifying information.
- Document within ten (10) working days, on CS-50 in the adoptive parent's record, the time, place and person to whom CS-50 was provided and retain copy in the case file.
- Record all activities in the case narrative, and insert all forms, reports and other correspondence in the "Adopted Adult Information Request" section of the adoptive parent(s) case record.

2.6.6 Adoption Information Registry

The Missouri Adoption Information Registry, operated by the Children's Division, is a service by which adopted adults and biological parents or adult siblings may indicate their desire to be contacted by each other.

The Registry can accept applications from adopted adults who were adopted in Missouri or whose biological parents had their parental rights terminated in Missouri. The Registry also processes application from those biological parents who relinquish a child for adoption in Missouri as well as adult siblings wishing to have contact with the adopted adult.

This Procedure is Based on [SUBSECTION 453.121, RSMo.](#)

"The Adoption Information Registry, located in Central Office, will accept registrations via the CD-51a Adopted Adult Registration, CD-51b Biological Parent Registration or the CD-51c Adult Sibling Registration form through the mail or direct delivery in an envelope marked "Confidential."

- The adopted adult must be age 18 or over before registration is permitted.
- Biological parents can register any time following termination of parental rights.
- Adult siblings may register when they are 18 or over.

Adopted adults may obtain identifying information on adult siblings with the sibling's consent without the court having to find that such information is necessary for health-related purposes.

When a "match" occurs and both parents have not registered and the other is located, the located parent must file an affidavit authorizing the release of identifying information with the court which granted the adoption or register with the "Adoption Information Registry."

If a biological parent authorizes the release of information or if a biological parent is found to be deceased, the court shall disclose the identifying information as to that biological parent to the adopted adult as long as the other biological parent is:

- 1) unknown;
- 2) known but cannot be found and notified;
- 3) deceased; or
- 4) has filed with the court an affidavit authorizing the release of information.

The Children's Service Worker shall:

- Receive request for information from biological parents, adult sibling(s) or adopted adult.
- Give the CD-51a Adopted Adult Registration, CD-51b Biological Parent Registration or CD-51c Adult Sibling Registration to the interested party along with the brochure about the registry.
- Receive request from Central Office to aid in identification of and/or search for other biological parent in the event a "match" has occurred.
- Search Division files for identification of the other biological parent and possible location:
 - Complete confidential notification of other biological parent if identified and located.
 - Provide information regarding option, i.e., registration with the Adoption Information Registry or filing an affidavit with the court which granted the adoption indicating identifying information may be released.

NOTE: Failure to do one of the above options will prohibit the release of information about any of the registrants.

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- Report outcome of identification and status of biological parent's consent via CD-51b within (5) five days to the Adoption Information Registry in a confidential envelope.
- Record all activities in the case narrative of the adoptive parent(s)'s case file within (10) ten days of the point action is completed. Then file all forms, reports and other correspondence in the "Adopted Adult Information Request:" section of the adoptive parent(s) case record.

Related Subject: CD Forms and Instructions
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Chapter Memoranda History: (prior to 01-31-07)

[CS03-07](#), [CD04-79](#), [CD05-25](#), [CD06-07](#), [CD06-27](#), [CD06-75](#),

Memoranda History:

[CD07-13](#), [CD07-61](#), CD09-84, CD11-75

2.7 Health Insurance Portability and Accountability Act (HIPAA)

Overview of HIPAA

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, resulted in the establishment of HIPAA Privacy Rule in December of 2000. The HIPAA Privacy Rule is a federal rule designed to protect individuals' medical records and other personal health information. This federal law provides further requirements and restrictions in addition to the confidentiality provisions set out in this chapter.

In the course of business, the Children's Division (CD) receives, discloses and utilizes Protected Health Information of employees and clients for a variety of reasons. Employees should exercise care at all times to discuss confidential, sensitive, or personal health information in a manner or place where the discussion is not able to be easily overheard. Measures should be taken to ensure that health information is not accessible to anyone other than the authorized personnel. CD staff will maintain privacy, confidentiality and integrity with regard to protected health information as required by state and federal laws, rules and regulations and professional ethics. Employees found to be in violation of this policy may be subject to disciplinary action up to and including dismissal as well as prosecution in a court of law.

Related Subject: Section 1, Chapter 3 Attachment A: Foster Parent Bill of Rights And Responsibilities.
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Protected Health Information (PHI) refers to health information that is individually identifiable and created or received by a covered entity, such as Children's Division. PHI is defined as any information relating to past, present or future physical or mental health of an individual; the provision of health care to the individual; or the payment for health care. Individually identifiable health information is health information that identifies or reasonably may be used to identify the individual. Health information that is created or received by the Children's Division is protected under the regulation, including but not limited to the following:

- Name/Address;
- Employer;
- Names of Relatives;
- DOB/SSN;
- Telephone number;
- DCN/MO HealthNet number;
- Occupation;

- Diagnosis;
- Hospital/Physician/Psychologist/Therapist evaluations and/or records;
- Authorizations/payments to a medical/mental health provider;
- Child/family investigations, assessments, service plans;
- Child/family contact and progress notes and/or summaries.

Major Provisions of HIPAA:

- Define a “minimum necessary” standard;
- Distinguish between “authorization to disclose” and “accounting for disclosure”;
- Give the individual an opportunity to agree or object to use and disclosure of PHI;
- Require the use of a privacy notice;
- Allow individuals to access PHI;
- Permit individuals to request an amendment of PHI;
- Allow persons to request an accounting of certain disclosures of PHI;
- Establish who has access to PHI;
- Create civil and criminal penalties for violating the HIPAA standards;
- Require workforce members to be trained on and to acknowledge the HIPAA provisions;
- Verify the identity and authority of persons requesting a client’s PHI;
- Allow recipients to request restrictions on the use and disclosure of PHI; and
- Mandate that organizations have a privacy officer.

Key Terms Regarding HIPAA:

“*Covered Entity*” – a Health Plan (Insurance Company and HMO’s), a Healthcare Clearinghouse, or a Healthcare Provider that transmits any health information electronically. The Department of Social Services (DSS) administers the MO HealthNet Program, which is considered a Health Plan. Consequently, DSS is a “covered entity” and has chosen to designate itself as a “single covered entity”. Therefore, all programs and each Division within DSS are subject to and must comply with HIPAA requirements and privacy rules.

“Use” – when we use or share information internally, either within our Children’s Division county/circuit, between Children’s Division counties/circuits, or between DSS agencies (such as Children’s Division and Division of Youth Services). We would “use” consumer PHI to make treatment/service decisions, or to make payment decisions, or for other parts of our children’s services operations. For example, we may “use” Protected Health Information to make a decision to request removal of a child from their parents during a sexual abuse investigation. HIPAA does not require staff to obtain disclosure authorizations when PHI information is being used for treatment, payment, or health care operations.

“Disclose” – when we share information outside the Department of Social Services (which is a covered entity), to an individual, agency, or organization external to us. One example would be when we disclose information to the courts when we are ordered to do so. The court is outside our agency and the sharing of such customer information is not considered in the course of treatment/services, so we are disclosing information to the court. While disclosures to the juvenile courts, law enforcement, and prosecutors now allowable under current policy and law are exempt from HIPAA disclosure requirements as described in subsection 2.7.2., other kinds of disclosures are not exempt such as described in subsection 2.7.3.

“Psychotherapy notes”— notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual’s medical record and designated specifically as psychotherapy notes. Psychotherapy notes excludes medications prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date. There should not be an instance during the provision of Children’s Division services when such recordings would be designated in a client file as psychotherapy notes.

2.7.1 “Minimum Necessary” Requirements for Sharing Protected Health Information

Federal regulations provide that staff at all times make a reasonable effort to **limit PHI to the minimum necessary to carry out the intended purpose** of use, disclosure or request. Consequently, staff must ensure that PHI is not unnecessarily or inappropriately accessed or disclosed. The following are examples:

- a. A pharmacy calls to verify a foster child’s MO HealthNet number. The purpose is for providing a service to the child and for billing the state for those services. Giving the provider the child’s MO HealthNet number and current eligibility gives the minimum necessary information and is appropriate. It would be inappropriate to share additional information such as why the child is in foster care or other PHI.

- b. A Children's Service Worker following confidentiality procedures as outlined in the appropriate Child Welfare Manual sections calls a local food pantry to secure an emergency food order for a family. The worker provides the food pantry with the family members' names, ages, and a brief description that the family is in need because they were recently robbed. The Children's Service Worker does not provide information that the mother is schizophrenic or that the father is currently in outpatient alcohol treatment. Sharing of the mother's diagnosis or father's diagnosis/treatment (both considered PHI) was not necessary to securing an emergency food order (as Protected Health Information is not being shared, a client authorization specifically for release of health information is not necessary).
- c. A Children's Service Worker is expecting a psychological evaluation of a client he is currently serving and alerts the office clerk to this fact. The office clerk who receives the evaluation in the mail only needs to verify from the name of the client and the worker who currently has that client in his caseload. The caseworker and the person who distributed the mail followed the minimum necessary standard. However, it would have been inappropriate for the clerk to read the evaluation contents.

When "Minimum Necessary" Does Not Apply

The requirement for disclosing the "Minimum Necessary" information to accomplish the intended purpose does **not apply** to the following:

1. Disclosures to or requests by a health care provider for treatment;
2. Uses or disclosures made to the individual;
3. Uses or disclosures made pursuant to an authorization (refer to section on Authorizations for Disclosures for Protected Health Information);
4. Uses or disclosures that are required by law; and
5. Investigations of complaints made to the Secretary of the Department of Health and Human Services and/or compliance reviews conducted by the Department.

2.7.2 Uses and Disclosures of PHI which do not Require Authorization for Disclosure of Health Information

Staff may use and disclose PHI without a completed Authorization for Disclosure of Health Information by DSS for the purposes of treatment, payment, and healthcare for an individual. In addition, the following list summarizes other instances in which an authorization to use or disclose PHI is **not required** from the individual.

NOTE: The program policy may, however, require a standard release of information from the client even in cases where HIPAA does not require a PHI authorization for disclosure.

- a. To a public health authority (i.e., sharing information with the Missouri Department of Health and Senior Services, which is conducting a public health surveillance, investigation, or intervention);
- b. To report child abuse/neglect situations, and other situations involving abuse, neglect or domestic violence (if disclosure is allowed by law);
- c. To the United States Food and Drug Administration under certain circumstances;
- d. To a health oversight agency that is authorized by law to conduct audits, investigations, inspections and other activities for oversight of health care systems, certain government programs, etc., (i.e., the United States Department of Health and Human Services conducts periodic reviews and audits of the Medicaid program);
- e. To judicial or administrative proceedings under certain circumstances; (refer to Child Welfare Manual policies and procedures in regard to information shared with the juvenile courts);
- f. To law enforcement officials as required by law or pursuant to a court order, a court-ordered warrant, or a subpoena or summons issued by a judicial officer; a grand jury subpoena; or an administrative request, such as an administrative summons or a civil investigative demand; for purposes of identifying or locating a suspect, fugitive, material witness, or missing person; or regarding a crime victim;
- g. To avert a serious threat to health or safety;
- h. To certain governmental functions, such as national security;
- i. To certain agencies that are government programs providing public benefits (i.e., CD sharing information with the Department of Health and Senior Services or the Department of Mental Health regarding for the intent of securing Community-Based Services treatment for an individual);
- j. As required by law (refer to Child Welfare Manual policy in regard to information sharing with juvenile courts, law enforcement and prosecutors as defined by statute and state law).

Other situations that do not require an Authorization for Disclosure of Health Information by DSS

Use of PHI for treatment, payment or health care operations.

If staff are using PHI to arrange counseling, evaluation, medical exams or other treatment, payment or health care operations for adults or children, a HIPAA authorization for disclosure from the client is not required. (The provider may require an authorization for disclosure to release information back to staff). Examples of when authorizations for disclosures are not required include following situations:

- a. Releasing the minimum necessary PHI to a MO HealthNet provider to allow the provider to charge for provided services;
- b. Making a referral to a CTS provider for treatment;
- c. Making a referral to a doctor for a SAFE exam;
- d. Using PHI to determine eligibility for MO HealthNet or MC+;
- e. Obtaining medical reports to document domestic violence to establish good cause for not cooperating in child support collections for a Temporary Assistance; claimant.

Children in CD Custody:

When children are in CD custody, staff have the same authority as parents do under HIPAA regulations with regard to disclosure of information.

2.7.3 Uses and Disclosures Requiring Authorizations for Disclosure of Health Information by DSS

If staff believe it is necessary to disclose PHI for a **non-treatment-related purpose** for a family member or a child not in our custody, an Authorization for Disclosure of Health Information by DSS is required. All such authorizations obtained from the client must be filed in the client's case file. Two examples are as follows:

1. Staff have information regarding a father's psychiatric diagnosis of Obsessive-Compulsive Disorder (OCD). The client has severe financial, utility and rent problems. Staff calls a private charitable organization and advises the organization of the client's financial problems to include the immediate need for funds to cover the cost of psychotropic medication to treat his OCD diagnosis. Disclosure of the identifiable medical information (OCD diagnosis and prescription medication information) to the organization violates HIPAA unless the client completed the Authorization for Disclosure of Health Information by DSS. In this

example, staff should have obtained the client's authorization or withheld the PHI.

2. The Children's Service Worker has been providing Family Centered Services to a family. The mother in the family has been diagnosed with depression and is under treatment with a psychiatrist and individual therapist. One of the mother's children, an 8-year old boy, has been tardy 10 times and absent 11 days in the past quarter. The worker has been invited to participate in Crisis Team meeting at the boy's school. During the course of the meeting the team explores possible reasons behind the boy's school attendance difficulties. Although the worker is aware that the mother's depression is interfering with her ability to get the boy up and ready to catch the school bus, the worker refrains from sharing information regarding the mother's diagnosis and treatment. Disclosure of the medical information (diagnosis of depression and treatment/therapy) violates HIPAA unless the client completed the Authorization for Disclosure of Health Information by DSS.

NOTE: The Authorization for Disclosure of Health Information by DSS is **not** necessary when: (1) Protected Health Information is shared with juvenile courts, law enforcement and prosecutors per current policy and procedures, which are based on existing law; (2) for children who are in CD custody; (3) when Protected Health Information is shared for treatment, payment or health care operations; or (4) shared with other divisions of the Department of Social Services, as all of DSS is considered a "single covered entity".

If it is necessary to disclose PHI in order to protect either the individual or the health and safety of others, CD staff must document to whom information is given, the reason the information was given, and the contact/clearance with supervisory staff using the PHI Disclosure Tracking Log, MO 886-4452.

2.7.4 Client Requests to Restrict the Use and Disclosure of Protected Health Information

Individual Request for Restriction Of PHI

Clients have the right to request specific restrictions on the use or disclosure of PHI. Clients must file this request in writing by completing a Request for Restriction of Health Information, MO 886-4450. Staff must send the completed request through supervisory channels to the CD Privacy Officer.

Agreement or Denial of the Request

The CD Privacy Officer must receive the written request and determine whether it will be approved. The CD Privacy Officer will consult with the DSS Privacy Officer and provide staff and the client with the final decision. DSS will act on the request no later than 60 days after receipt of the request. DSS may request an extension of 30 days by notifying the client in writing.

- If approved, staff must notify the parties of the change, implement the restriction and ensure that such protected information is easily identifiable in the client's record to avoid possible use or disclosure. One method would be to attach a cover sheet to the PHI, identifying to whom the information may or may not be released.
- If denied, do not implement client's request for the restriction.
- File the original Request for Restriction of Health Information form in the front of the client case file.

While the individual has the right to request any kind of restriction of PHI uses and disclosures, the Division is **not required** to agree to those restrictions.

Termination of Restriction

Terminate the agreement to a restriction of information as follows:

- a. The client requests the termination in writing; and
- b. File the written request for termination of restriction in the front of the case together with the initial request for restriction.

Emergency Exception

If DSS has agreed to the restriction, but the individual who requested the restriction is in need of emergency treatment, and the restricted PHI is needed to provide the emergency treatment, staff may disclose that PHI to a health care provider to provide such treatment. If such PHI is disclosed in an emergency situation, the facility must require that the health care provider to whom the information was disclosed to not further use or disclose that PHI.

2.7.5 Amendment of Protected Health Information

A client who has, is receiving, or was denied services, a parent of a minor, and/or a personal representative or legal guardian as relevant to their representation, may request an amendment or correction of health information. Additionally, a personal representative or legal guardian must have written authorization from the client to amend or correct PHI. Individuals making this type of request should complete the Request for Amendment/Correction of Protected Health

Information, MO866-4457, to record the request, unless the information involves minor discrepancies, as described below.

Minor Discrepancies

For minor discrepancies such as typing errors, misspelled names, wrong dates, etc., staff may correct the entry by drawing a single line through the error, adding a note that explains the error, dating it, initialing it, and by making the correction as close as possible to the original entry in the record. In this situation, the individual is not required to fill out the Request for Amendment/Correction of Protected Health Information form.

Additions to the file should not be treated as amendments. For example, the name of a client's new primary physician would not be considered an amendment.

Other Requests

All other requests for amendment of PHI must be in writing and include the reason to support the amendment. The request should include any documentation that explains or verifies the incorrect or incomplete information. As noted above, the client should be instructed to complete the Request for Amendment/Correction of Protected Health Information form to record this request. Immediately forward the form and all documentation to the CD Privacy Officer. The CD Privacy Officer will act on the request no later than 60 days after receipt of the request. The CD Privacy Officer may request an extension of 30 days by notifying the client in writing.

If the amendment request is accepted, staff must upon notification by the CD Privacy Officer:

1. Insert the amendment or link the amendment to the site of the information that is the subject of the request for amendment, and then document the change in the same section of the record as the original information; and
2. Inform the individual that the amendment is accepted; and
3. Obtain the authorization of the individual to notify all relevant persons or entities with whom the amendment needs to be shared; and
4. Within 60 days, make reasonable efforts to provide the amendment to the persons identified by the client and any persons that staff knows that have been provided the PHI that is the subject of the amendment and who may have relied on or could possibly rely on the information to the detriment of the client.

Denying Requests for Amendment of Protected Health Information

The request for amendment of the PHI may be denied if:

1. Staff did not create the information (however, if the individual can provide reasonable proof that the person or entity that created the information is no longer available to make the amendment, and the request is not denied on other grounds, the amendment is permissible);
2. The information is not part of the medical information kept in the client's case record;
3. The information is not part of the information that the client would be permitted to inspect and copy; and
4. The information is accurate and complete.

If the amendment request is denied, the CD Privacy officer notifies the client and staff. The denial notice explains:

The reason for the denial:

1. The person's right to submit a written statement disagreeing with the denial and how the individual may file such a statement;
2. The name, title, address, and telephone number of the DSS Privacy Officer to whom a statement of disagreement should be addressed;
3. The steps to file a complaint with the Secretary of the Department of Health and Human Services; and
4. A statement that if the client does not submit a statement of disagreement, the client may request that DSS provide the Request for Amendment/Correction of Protected Health Information and the denial notice with any future disclosures of PHI.

Client Disagrees with the Denial

The individual has the right to submit a written statement disagreeing with the denial of all or part of a requested amendment and the basis for the disagreement. This statement of disagreement shall be limited to one page and be submitted to the DSS Privacy Officer. DSS will complete a written response to the statement of disagreement and send it to the client and staff.

Staff must identify the record of PHI that is the subject of the disputed amendment and append or link the request for an amendment, the denial of the request, the individual's statement of disagreement, if any, and DSS' response statement if any. If the client has submitted a statement of disagreement, staff

must include the documents listed in the prior sentence, or an accurate summary of the information, with any subsequent disclosure of the PHI to which the disagreement relates.

If the person has not submitted a written statement of disagreement, DSS must include the person's request for amendment and its denial, or an accurate summary of the information, with any subsequent disclosure of PHI only if the client has requested it.

2.7.6 Client's Right to Access their Health Information on File in Children's Division Records

Individuals may have access to and obtain a copy of their PHI. A client who has, is receiving, or was denied services, a parent of a minor, and/or a personal representative or legal guardian as relevant to their representation, must request in writing access to inspect, or receive copies of PHI. Additionally, a personal representative or legal guardian must have written authorization from the client to access PHI. Use the Individual's Request for Access to Protected Health Information, MO 886-4451, for the client's request. This form should be used anytime a client is requesting access to and/or a copy of their file and the file has any Protected Health Information.

Staff Assistance to the Individual

Staff may assist the individual in initiating this process. For example, the client may want a copy of his or her doctor's report from their Children's Division case file, but he or she may not remember the examination date. Provide the date from the case record to help the person.

Approving the Request for Client Access to PHI

Individuals and/or their attorneys or representatives frequently request access to specific Protected Health Information in files, such as a copy of their counseling reports. At other times, the individual or representative may be requesting access to their entire case file or to their CA/N investigation record. Staff should refer to policies and procedures in the Child Welfare Manual on how to respond to these requests (See Child Welfare Manual Section 5.2.4). However, as many case files and CA/N investigation records contain PHI, if staff ascertain that any of the information in the file could be PHI, staff should also have the individual and/or personal representative fill out the Individual's Request for Access to Protected Health Information. Staff should also verify that the personal representative requesting information is truly representing the individual.

The Request form could be completed at the time the individual comes in to review their file or to pick up copies of their information, or the form could be mailed to the individual and returned to staff. Copies of the Individual's Request for Access to Protected Health Information should be retained in the file.

If after review staff approve the request, staff shall ensure access in a timely manner and arrange for a mutually convenient time and place for the client to inspect the PHI or obtain copies, unless access in another format has been requested by the client and agreed to by staff as (see Requested Format below). Charge the same per page copying fee that CD uses to reimburse medical providers. **Do not** charge any search or retrieval fees. The client's agreement to any costs is confirmed by the person checking the appropriate box on the Individual's Request for Access to Protected Health Information form. Any requests for additional accommodations shall be sent or given in writing to the CD Privacy Officer.

Providing a Summary of the PHI

If it is acceptable after discussion with the client, a summary of the PHI may be used. The client's agreement to a summary shall be documented in writing by checking the appropriate box in the Individual's Request for Access to Protected Health Information form. Staff should then forward to the DSS Privacy Officer the Individual's Request for Access to Protected Health Information form, copies of the requested information and a cover memorandum. Advise the DSS Privacy Officer that you recommend that the client receive the requested summary.

Requested Format

The request is processed in the format requested (i.e., hard paper copy, microfiche, computer disk, etc.), if possible, and in a timely consistent manner according to established timeframes but not more than 30 days after receipt of the request. If the record cannot be accessed within the 30 days, the timeframe may be extended once for no more than an additional 30 days with notification in writing to the individual outlining reasons for the delay and the date the request will be concluded.

Request Denials

If after review of the request, staff believe that a request should be denied, the request together with appropriate documentation shall be forwarded to the CD Privacy Officer for review, decision, and response to the client.

Denials without a Right to Review

The CD Privacy Officer, in cooperation with CD staff, may deny requests for access to protected health information **without a right to review** in the following situations:

- If the information conforms to one of the following categories:
psychotherapy notes; information compiled for use in a civil, criminal or administrative action or proceeding;

- If the client is participating in a research related treatment and has agreed to the denial of access to records for the duration of the study;
- If access is otherwise precluded by law;
- If the information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information; and
- If DSS has been provided a copy of a court order from a court of competent jurisdiction, which limits the release or use of PHI.

Psychotherapy Notes

Psychotherapy notes have special protections under HIPAA in terms of releasing such notes to the individual. As noted earlier, psychotherapy notes are defined as “notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual’s medical record.” Case narratives compiled by Children’s Division Children’s Service Workers are an integral part of the case record and do not meet the definition for psychotherapy notes.

Case records may, however, contain psychotherapy notes that originated from a mental health professional. Psychotherapy notes are a distinct and separate category from counseling reports, counseling summaries or psychological evaluations. Psychotherapy notes are exempt from individual access. If an individual requests a document that is labeled psychotherapy notes do not release that specific information and submit the request to the CD Privacy Officer. The CD Privacy Officer will review the request and notify staff of the decision. Other information should be released to the individual per the policies and procedures of the Child Welfare Manual upon execution of the signed Individual’s Request for Access to Protected Health Information.

Denials with a Right to Review

Although, the CD Privacy Officer, in cooperation with CD staff, may deny requests for access to protected health information, the client does have a right to review of this denial in the following situations:

1. A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person:
2. The Protected Health Information makes reference to another person and a licensed health care professional has determined that the access

requested is reasonably likely to cause substantial harm to such other person; or

3. The request for access is made by the individual's personal representative and a licensed health care professional has determined that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

If a client is denied access to all or part of their PHI contained in the CD case file, they have a right to appeal the denial decision. If the client or personal representative requests a review of the denial DSS has designated a licensed health care professional, who was not involved with the initial decision to deny access, to review the decision. Denial reviews will be referred by the DSS Privacy Officer to a designated departmental licensed health care professional for completion of the review. Such denial reviews shall under no circumstances be completed by any other licensed health care professional. Staff must complete the following in processing a request for review of a denial to access PHI:

4. The appeal shall be submitted in writing to the DSS Privacy Officer. The DSS Privacy Officer will then designate a licensed health care professional to review the denial; and
5. The designated licensed health care professional who did not participate in the original decision to deny access shall review the record and the request for access to the client's record;
 - a. If the reviewer determines that the initial denial was appropriate, the DSS Privacy Officer notifies in writing that the review resulted in another denial of access. The notice includes the reasons for denial and describes the process the individual may use to make a complaint to the Secretary of the Department of Health and Human Services.
 - b. If the denial was not appropriate, the licensed health care professional who acts as the reviewer shall refer the request to the DSS Privacy Officer for action. The Privacy Officer may provide this PHI to the individual or direct staff to provide it.
 - c. If access is denied to any portion of the PHI, access must still be granted to those portions of the PHI that are not restricted.

Denial of Access

If after review, CD denies access to PHI in whole or in part, CD may as directed:

1. Make other PHI information accessible to the individual after excluding the denied PHI; or

2. If the information requested is not maintained by CS and staff is aware of the location of such information, staff may inform the individual where to direct his or her request. Make other PHI information accessible to the individual after excluding request.

Release of PHI of a Deceased Client:

The PHI of a deceased client may only be released via a Probate Court order from the County Circuit Court where the deceased resided or from another Probate Court in the State of Missouri. In the case of a child victim who is the reported subject of abuse/neglect, information should be released per state law and statute with the juvenile court, law enforcement, prosecutors and members of the Child Fatality Team.

Other requests for information should be referred to the CD Privacy Officer.

2.7.7 Accounting Disclosures of Protected Health Information

Staff must account for all disclosures of PHI made by CD in the six years prior to the date on which the accounting is requested by the client, effective April 14, 2003. However, no tracking or accounting is required in the following exceptions:

1. Disclosures made to carry out treatment, payment, and healthcare operations that are not required by law. This would include protected health information disclosures made to the members of the multi-disciplinary treatment team and Family Support Team (i.e., school personnel, counselors, day-care staff, para-professionals, etc.) who are responsible for decision making and carrying out treatment in regard to a child who is in our custody unless that disclosure is required by law. Note that in general all disclosures about protected health information made to the juvenile court, Guardian-ad-Litem, CASA, law enforcement, prosecutors and courts are broadly **required by law** and, accordingly, do have to be tracked—see section below on when and how to use the PHI Disclosure Tracking Log;
2. Disclosures made to the individual client about their own PHI;
3. Disclosures made with an authorization from the individual;
4. For national security or intelligence purposes;
5. To correctional institutions;
6. As part of a limited data set;
7. Disclosures made for DSS operating purposes (i.e., staff are working with the MO HealthNet Division to coordinate MO HealthNet eligibility);

8. Incidental to a use or disclosure otherwise permitted or required;
9. That occurred prior to the compliance date of April 14, 2003; and
10. Disclosures of protected health information made to foster parents, who are considered extensions of staff;

Use the PHI Disclosure Tracking Log form to record all disclosures unless exempted above. The employee releasing the information must immediately update this form upon the disclosure. File the PHI Disclosure Tracking Log in the front of the client case record. The log must be maintained for at least six years from the date of the most recent disclosure. Disclosures that must be accounted for on the log include:

1. To public health authorities **as required by law** (i.e., birth, death, and required disease reporting);
2. To avert a serious threat to health or safety of a person or the public;
3. To the Food and Drug Administration (i.e., adverse events, product defects, tracking product recalls, post marketing surveillance);
4. To health oversight agencies for oversight activities authorized by law;
5. To law enforcement officials as required by law or pursuant to a court order, or subpoena, or administrative request; for purposes of identifying or locating a suspect, fugitive, material witness, or missing person; or regarding a crime victim;
6. Information about victims of abuse, neglect, or domestic violence disclosed to a government authority to the extent the disclosure is required by law; this would include reports of death made by staff to Child Fatality Review panel (RSMo 210.115);
7. For some research purposes;
8. To governmental functions (i.e., national security, military command authority, veteran's information); and
9. As otherwise required by law, including:
 - a. Referrals for children exposed to substance abuse/Newborn Assessments to Department of Health where referral discloses Protected Health Information —RSMo 191.737;
 - b. Reports of child abuse/neglect containing PHI disclosed to law enforcement which Division personnel determine merit an

investigation, or, which if true, would constitute suspected violation of RSMo 210.145 (3);

- c. Information regarding status of an investigation containing Protected Health Information provided to the public school district liaison – RSMo 210.145 (4);
- d. Disclosures (records/files/written reports and verbal reports) of records containing Protected Health Information for administrative review by the child abuse and neglect review board—RSMo 210.153;
- e. Records containing PHI assessed by grand, jury, juvenile officer, prosecuting attorney, law enforcement officer, juvenile court or other court conducting abuse or neglect or child protective proceedings and other federal state and local government entities, or any agent of such entity with a need for such information in order to carry out its responsibilities under law, multidisciplinary agency or physician or physician’s designee who is providing services, —RSMo 210.150 - (6);
- f. Written reports (CS-1) containing PHI about the status of a child required every six months disclosed to the juvenile court—RSMo 210.720;
- g. Disclosure of Protected Health Information by staff to GAL or CASA of all reports and to fully inform of all aspects (records/files/written and verbal reports) of the case of which staff have knowledge or belief—RSMo 210.160;
- h. Disclosure of Protected Health Information (records/files/written and verbal reports) to Child Fatality Review Panel to investigate deaths—RSMo 210.194;
- i. Disclosure of record (records/files/written and verbal reports) containing PHI to ICPC—RSMo 210.620;
- j. Reports (records/files/written and verbal reports) disclosed to the court containing PHI in permanency hearings –RSMo 210.720;
- k. Disclosure (records/files/written or verbal reports) of information containing PHI pursuant to a subpoena or court order.

NOTE: Many exchanges of information whether made in writing or verbally while speaking with juvenile court staff, GAL's, and law enforcement authorities will contain Protected Health Information. These disclosures of PHI do require logging and providing an accounting upon request by the parent or personal representative of a child, including a child who is in CD custody.

Individuals requesting information about disclosures as described above should complete the Request for an Accounting of Disclosures, MO 886-4061 to request an accounting. Upon receipt of this form, send a copy of the PHI Disclosure Tracking Log along with the request form to the CD Privacy Officer who will contact the DSS Privacy Officer. If staff determines that providing copies of the disclosed information or other information may be helpful to the DSS Privacy Officer, include with the log sheet and any necessary summary. The DSS Privacy Officer will review all disclosure logs pertaining to the client held by any of the Divisions within DSS. Once review is completed, the DSS Privacy Officer will provide the accounting of disclosure to the client.

NOTE: Once the construction of the DSS PHI Disclosure Tracking database on the DSS Intranet is completed, all disclosures logged per instructions in above section must be entered into the data base within 5 days of the disclosure.

DSS must provide an accounting no later than 60 days after receipt of the Request for an Accounting of Disclosures form. The deadline can be expended up to 30 days. The first accounting is without charge to the individual in any 12-month period.

2.7.8 Privacy Notices

CD must provide a privacy notice to individuals as of April 14, 2003, and thereafter by:

- Providing a copy upon an individual's request;
- Providing a copy at the time a person applies;
- Providing a copy at the time CD staff conduct a CA/N investigation, assessment or referral;
- Issuing a copy within 60 days of a material revision of the notice;
- Posting the notice in each office in a clear and prominent location;
- Making the notice available at each office so an individual can request and obtain a copy;

- Notifying clients no less frequently than once every three years of the availability of the notice and how to obtain a copy;
- Posting the notice on the agency's web site; and
- Emailing a copy upon an individual's request for an electronic notice.

2.7.9 No Intimidation or Retaliation

CD employees may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any individual or other person for exercising his/her rights under HIPAA or for participating in a process established by HIPAA. CD staff will comply with provisions of the Whistleblower Law (Department of Social Services policy 2-100), which states that supervisors and managers are not allowed to prohibit employees from discussing agency operations with members of the legislature or the state auditor.

2.7.10 Staff Access to Protected Health Information and Acknowledgement of Privacy Requirements

Staff are granted access to PHI in accordance with state and federal law and other DSS/Children's Division policies/procedures. Such access is limited to the minimum necessary to accomplish the purpose of any use or disclosure. Staff must protect the privacy of individually identifiable health information, must recognize the importance of such confidentiality provisions, and affirmatively acknowledge those guidelines.

Staff Access:

Employees shall be granted access to PHI in accordance with state and federal law and other relevant DSS/CD operating procedures. Such access shall be limited to the minimum necessary amount of protected health information to accomplish the purpose of any requested use or disclosure of PHI.

Each office shall establish a procedure for how its workforce members are to physically access PHI in medical records (i.e., how to sign records in and out and under what conditions, etc.)

2.7.11 Duty to Mitigate

When CD learns that an employee or business has used or disclosed PHI in violation of HIPAA regulations, CD will take actions appropriate to prevent further inappropriate uses or disclosures and pursue any feasible actions to lessen the harmful effects of any such violations.

2.7.12 Emergency Policy

Provisions of this section will be coordinated between divisional privacy officers and the DSS privacy officer. In the event of an emergency that renders a local CD office incapable of providing an individual or their representative with information to which the individual is entitled under the requirements of HIPAA, the individual will be given a telephone number or a website address where the said individual may obtain the required information upon proper verification. In the event of such an emergency, information will be released through a predetermined telephone number via electronic media. No information will be released from a local office until it is verified that all information systems within that office are HIPAA compliant.

2.7.13 Retention/Destruction of Protected Health Information

Documentation recording disclosures of PHI (PHI Disclosure Tracking Log) should be retained for a period of six years. Records involved in any open investigation, audit or litigation should not be destroyed/disposed of. If notification is received that any of the above situations have occurred or there is the potential for such, the record retentions shall be suspended for these records until such time as the situation has been resolved. Divisions with federal regulations that supersede HIPAA should include retention information in their divisional procedures.

Destruction/disposal of protected health information will be carried out in accordance with federal and state law and divisional policies. This may include any record of client health information, regardless of medium or characteristic that can be retrieved at any time. This includes all original client records, documents, papers, letters, billing statements, x-rays, films, cards, photographs, sound and video recordings, microfilm, magnetic tape, electronic media, and other information recording media, regardless of physical form or characteristic, that are generated and/or received in connection with transacting client care or business.

Records scheduled for destruction/disposal should be secured against unauthorized or inappropriate access until the destruction/disposal of client health information is complete. A contract between DSS and a business associate should provide that, upon termination of the contract, the business associate will return or destroy/dispose of all patient health information. If such return or destruction/disposal is not feasible, the contract must limit the use and disclosure of the information to the purposes that prevent its return or destruction/disposal.

Health information media should be destroyed/disposed of using a method that ensures the health information cannot be recovered or reconstructed. Appropriate methods for destroying/disposing of media are outlined in Appendix N.

2.7.14 Other General Documentation Requirements

In addition to the requirements above, CD staff should maintain documentation as listed below. Copies of such information should be forwarded to the DSS Privacy Officer:

1. Any signed Authorization for Disclosure of Health Information by DSS;
2. Authorization for access to files by personal representatives;
3. All complaints received, and their disposition;
4. Any sanctions to employees that are applied as a result of non-compliance; and
5. Any use or disclosure of protected health information for research without the individual authorization.

2.7.15 Complaint Process

If an individual believes that Children's Division and/or its representative are not complying with the requirements of HIPAA, (s)he may file a complaint with one or both of the following:

1. DSS Complaint Officer; PO Box 1527; Jefferson City, MO 65102-1527.
2. Secretary of the Department of Health and Human Services (DHHS); 200 Independence Avenue, SW; Washington, DC 20201.

The Health Insurance Portability and Accountability Act Complaint form will be provided to the complainant by the office where the complaint is lodged. The Complaint Officer will contact the facility from which the complaint originated and complete an investigation within thirty (30) days from the date it is received by the department. Once completed, the Complaint Officer will issue a response letter to the complainant with the determination and any indicated corrective measures. If the complainant is not satisfied with possible resolutions, the Complaint Officer will provide information regarding the process of filing a complaint with Secretary of DHHS.

2.7.16 Workforce Training

All members of the Children's Division workforce must be trained on policies and procedures with respect to PHI in accordance with DSS/CD policy by mandatory participation in HIPAA Privacy Training. As foster family care providers are considered an extension of the Children's Division workforce, they also must receive such training.

Title: Child Welfare Manual
Section 5: Case Record Maintenance And Access
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2.7.17 Sanctions

DSS employees who fail to comply with the privacy policies and procedures of this policy will be subject to disciplinary actions up to and including dismissal as well as prosecution in a court of law. Disciplinary actions will become part of the employee's personnel record.

Chapter Memoranda History: (prior to 01-31-07)

[CS03-07](#), [CD04-79](#), [CD05-25](#), [CD06-07](#), [CD06-27](#), [CD06-75](#)

Memoranda History:

CD07-44, CD07-52, CD12-85, CD15-28

Title: Child Welfare Manual
Section 5: Case Record Maintenance And Access
Chapter 2: Record Access
Attachment A: Cover Sheet for Release of CA/N Records
Effective Date: September 14, 2016
Page: 1

Attachment A: Cover Sheet for Release of CA/N Records

All CA/N records released by the Division shall contain the following information:

THE CHILDREN'S DIVISION IS ONLY RELEASING THIS CONFIDENTIAL INFORMATION TO YOU BASED ON YOUR NEED FOR SUCH INFORMATION IN ORDER TO CARRY OUT YOUR RESPONSIBILITY UNDER THE LAW TO PROTECT CHILDREN FROM CHILD ABUSE OR NEGLECT, OR IN RESPONSE TO YOUR REQUEST AND RIGHT TO RECEIVE SUCH INFORMATION PURSUANT TO §210.150 RSMo. DO NOT RE-RELEASE THIS CONFIDENTIAL DOCUMENT TO ANYONE EVEN IF THEY ARE ALSO AUTHORIZED TO OBTAIN A COPY OF THIS DOCUMENT FROM THE DIVISION.

PLEASE NOTE THAT THERE MAY BE ADDITIONAL INFORMATION AVAILABLE THAT MAY ONLY BE RELEASED PURSUANT TO THE AUTHORIZATION OF THE APPLICABLE CHILD'S PARENT OR GUARDIAN. FOR FURTHER INFORMATION PLEASE CONSULT WITH YOUR CHILDREN'S DIVISION POINT OF CONTACT.

THE DIVISION IS REQUIRED BY LAW TO INFORM YOU THAT ANY PERSON WHO KNOWINGLY VIOLATES THE PROVISIONS OF §210.150 RSMo., OR WHO PERMITS OR ENCOURAGES THE UNAUTHORIZED DISSEMINATION OF INFORMATION CONTAINED IN THE INFORMATION SYSTEM OR THE CENTRAL REGISTRY AND IN REPORTS AND RECORDS MADE PURSUANT TO §§210.109 TO 210.183 RSMo., SHALL BE GUILTY OF A CLASS A MISDEMEANOR. PLEASE DIRECT ALL REQUESTS FOR CONFIDENTIAL RECORDS TO THE DIVISION.

A cover sheet with the above wording follows this attachment and may be copied as needed.

Chapter Memoranda History: (prior to 01-31-07)

Memoranda History:
CD12-38, CD16-69

Title: Child Welfare Manual
Section 5: Case Record Maintenance And Access
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Attachment A: Cover Sheet for Release of CA/N Records
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THE CHILDREN'S DIVISION IS ONLY RELEASING THIS CONFIDENTIAL INFORMATION TO YOU BASED ON YOUR NEED FOR SUCH INFORMATION IN ORDER TO CARRY OUT YOUR RESPONSIBILITY UNDER THE LAW TO PROTECT CHILDREN FROM CHILD ABUSE OR NEGLECT, OR IN RESPONSE TO YOUR REQUEST AND RIGHT TO RECEIVE SUCH INFORMATION PURSUANT TO §210.150 RSMo. DO NOT RE-RELEASE THIS CONFIDENTIAL DOCUMENT TO ANYONE EVEN IF THEY ARE ALSO AUTHORIZED TO OBTAIN A COPY OF THIS DOCUMENT FROM THE DIVISION.

PLEASE NOTE THAT THERE MAY BE ADDITIONAL INFORMATION AVAILABLE THAT MAY ONLY BE RELEASED PURSUANT TO THE AUTHORIZATION OF THE APPLICABLE CHILD'S PARENT OR GUARDIAN. FOR FURTHER INFORMATION PLEASE CONSULT WITH YOUR CHILDREN'S DIVISION POINT OF CONTACT.

THE DIVISION IS REQUIRED BY LAW TO INFORM YOU THAT ANY PERSON WHO KNOWINGLY VIOLATES THE PROVISIONS OF §210.150 RSMo., OR WHO PERMITS OR ENCOURAGES THE UNAUTHORIZED DISSEMINATION OF INFORMATION CONTAINED IN THE INFORMATION SYSTEM OR THE CENTRAL REGISTRY AND IN REPORTS AND RECORDS MADE PURSUANT TO §§210.109 TO 210.183 RSMo., SHALL BE GUILTY OF A CLASS A MISDEMEANOR. PLEASE DIRECT ALL REQUESTS FOR CONFIDENTIAL RECORDS TO THE DIVISION.

(Children's Services Cover Sheet for Release of Child Abuse/Neglect Records)

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Section 5: Case Record Maintenance And Access
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Attachment B: Office Of Child Advocate

The Office of the Child Welfare Ombudsman was established per executive order August 2003. Effective August 28, 2004 the Office of the Child Welfare Ombudsman will be known as the "Office of Child Advocate for Children's Protection and Services" (Section 37.705.1 RSMo.) The purpose of the Office of Child Advocate for Children's Protection and Services is to assure children receive adequate protection and care from services, programs offered by the Department of Social Services, the Department of Mental Health or the juvenile court. The child advocate reports directly to the commissioner of the Office of Administration.

Per section 37.710.1 RSMo., the Office of Child Advocate for Children's Protection and Services shall have access to the following information:

1. The names and physical location of all children in protective services, treatment, or other programs under the jurisdiction of the Children's Division, Department of Mental Health and the juvenile courts;
2. All written reports of child abuse and neglect; and
3. All current records required to be maintained pursuant to chapters 210 and 211, RSMo.

The Office Shall Have The Following Authority:

1. To communicate privately by any means possible with any child under protective services and anyone working with the child, including the family, relatives, courts, employees of the Department of Social Services and the Department of Mental Health, and other persons or entities providing treatment and services.
2. To have access, including the right to inspect, copy and subpoena records held by the clerk of the juvenile or family court, juvenile officers, law enforcement agencies, institutions, public or private, and other agencies, or persons with whom a particular child has been either voluntarily or otherwise placed for care, or has received treatment within this state or in another state.
3. To work in conjunction with juvenile officers and guardian ad litem.
4. To file amicus curiae briefs (petition the court for permission to file a brief) on behalf of the interests of the parent or child.
5. To initiate meetings with the Department of Social Services, Department of Mental Health, the juvenile courts and juvenile officers.

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6. To provide information to the public regarding the Child Advocate's Office, its purpose and how to be contacted.
7. To apply for and accept grants, gifts, and bequests of funds from other states, federal, and interstate agencies, and independent authorities, private firms, individuals, and foundations to carry out duties and responsibilities. The funds shall be deposited in a dedicated account established within the office to permit moneys to be expended in accordance with the provisions of the grant or bequest.
8. Subject to appropriation, establish local panels on a regional or county basis to adequately and efficiently carry out the functions and duties of the office, and address complaints in a timely manner.

NOTE: Per agreement between the Department of Social Services/Children's Division and the Office of Child Advocate, complaints to the Office of Child Advocate will be addressed when all levels of grievances have been exhausted through Children's Division. Reports and records will be shared with the Office of Child Advocate upon circuit manager review. Unsubstantiated reports will be released upon written request to the division by the reporter. The Constituent Response Unit within the Children's Division will provide information to the Office of Child Advocate as outlined in Section 37.710.2 RSMo.

Related Subject: Section 2, Chapter 4, Attachment D Reporter Contact

Chapter Memoranda History: (prior to 01-31-07)

CD04-79

Memoranda History: