STANDARD: CONFIDENTIALITY

PURPOSE

The purpose of this standard is to provide direction and guidance to the Child and Family Services (CFS) program regarding confidentiality. This standard is intended to achieve statewide consistency in the development and application of CFS core services and shall be implemented in the context of all-applicable laws, rules and policies. The standard will also provide a measurement for program accountability.

INTRODUCTION

IDAPA rule 16.05.01.075 states that no one may use or disclose health or other confidential information without consent or authorization except as provided in IDAPA rule 16.05.01.100. With consent or authorization, confidential information will be used or disclosed only on a need-to-know basis and to the extent minimally necessary for the conduct of the Department's business and the provision of benefits or services, subject to law.

CFS works with families with complex needs and who are often involved with multiple service systems. This requires social workers to work collaboratively with multiple agencies and other family supports. Uniform practices in the disclosure of confidential information allows CFS social workers, supervisors, and other staff to work with external agencies and individuals to address the needs of children while at the same time protecting an individual's rights to privacy.

This standard is based on the following premises:

- Disclosure of information is sometimes necessary to adequately assess risk factors, proceed with efforts to prevent removal of a child from their home, and implement a safety plan;
- Disclosure of information to service providers outside of the Department is necessary in order for services to address the specific needs of each child.
- Disclosure and exchange of information with family members, fictive kin, and resource parents may be necessary to adequately meet the needs of children in state custody and work toward permanency;
- Disclosure of information to resource parents, residential treatment facilities, institutions, and other care providers is necessary to determine an appropriate placement, as well as for caregivers to provide adequate care and supervision to the children placed with them;
- Resource parents respond directly to the needs of children in care and therefore, need to have a thorough understanding of the needs and behaviors of children placed with them; and
- Resource parents have an important role in building positive alliances with children's parents, facilitating visitation and reunification efforts, and may serve as members of the planning team or other collaborative staffing.

IMPLEMENTING THE STANDARD

Notice of Privacy Practices
The Notice of Privacy Practices is a document that explains under what conditions and how the Department may use and share confidential information without permission, and when permission is necessary. It provides direction on how records may be reviewed and copied, amended, or restricted. It also explains how to file a privacy complaint.

Minimally Necessary and Need-To-Know Requirements for Internal and External Disclosure of Confidential Information
Department social workers will release or request only that confidential information necessary to obtain benefits or services, or perform normal business processes of the Department. In order to determine what specific confidential information is necessary, Department social workers should ask themselves if a decision or determination can be made without the requested information and what is the least amount of information actually needed. Department social workers are encouraged to consult with their supervisors around determinations of what information is "minimally necessary" and should be included as "need to know".

Some details of the case record, while interesting, are not necessary to make decisions, determinations, provide care, or services. Being as respectful as possible involves maintaining an awareness of the very personal nature of confidential information, as well as keeping in mind the purpose of sharing the confidential information. Sharing confidential information to simply satisfy someone's curiosity or for the purpose of gossiping is never appropriate.

Releases of Information
Department social workers should use the agency form "Idaho Department of Health and Welfare Authorization for Disclosure" which complies with Idaho Code and HIPPA requirements, which are:

- The request must identify the individual who is the subject of the record;
- The request must identify what information is to be released;
- The purpose for the authorization;
- The duration of the authorization;
- Who is to receive the information; and
- Be dated and signed by the individual or legal representative authorizing the release of information.

Department social workers must never ask for or accept releases of information that are incomplete, including asking someone to sign a blank or incomplete form to be completed at a later time. An authorization that has expired, been revoked, or has an essential component omitted is considered "defective" by Idaho Code, is not valid, and must not be acted upon.

When There are Barriers to Obtaining Consent to Release

In cases where disclosure of confidential information is determined necessary and there are barriers to disclosure or consent to release information has been denied, social workers should proceed through the following steps (1-3):

1. The social worker explains the benefits of consent and the rationale for why disclosure of the information is believed to be necessary.
2. The social worker informs their supervisor of the barriers to obtaining consent. The supervisor and social worker will determine if the disclosure of information is necessary to the safety, permanency, or well-being of the child.
3. The social worker receives consultation from the regional Deputy Attorney General (DAG) for a determination of whether the DAG supports a decision that disclosure of the information is necessary for the safety and/or provision of adequate care of the child. The DAG may counsel the social worker to obtain a court order in order to disclose this information, or advise the social worker on how to proceed.

External Agency Refusal to Release

If an external agency refuses to release information to CFS, the social worker should explain to the appropriate individual what the relevant issues are and how the requested information is necessary for service provision. If unsuccessful, the social worker should involve their immediate supervisor for assistance in contacting the agency to resolve concerns.

If the supervisor's involvement is unsuccessful and the other agency is covered by HIPAA, the issue should be forwarded to the agency privacy officer. The CFS privacy officer could assist in contacting the privacy officer of the other agency to facilitate a discussion of what information can and should be released.

Multidisciplinary Staffing

CFS social workers, supervisors, and other staff often participate in multidisciplinary staffing of cases. The disclosure of confidential information at case staffings are governed through Idaho statues, federal regulations, Department rules and child welfare best practice standards. Idaho Code 16-1617 establishes multidisciplinary teams and IDAPA 16.05.01.07 specifically addresses disclosure within a multidisciplinary team. It allows confidential information to be exchanged between employees of the Department, law enforcement, and other team members while participating in a multidisciplinary team evaluation of child protection cases, or while participating in an interdisciplinary Department staffing of services for an individual. While confidential information can be exchanged between multidisciplinary team members, individuals who participate in multidisciplinary team staffing must not redisclose information**.**

Confidential information may be disclosed in a case staffing by the Department and other individuals or entities if:

- All participants are involved with the same or similar populations;
- All participants have a comparable obligation to maintain confidentiality;

- The disclosure of information in an inter-agency staffing is necessary to coordinate benefits or services, or to improve administration and management of the services; and
- Information that is disclosed conforms to the principles of “need-to-know” and is only disclosed to the minimal extent necessary to conduct the staffing.

Family Drug Court and Family Unity Court
Several regions throughout the state work with individuals who are participating voluntarily in Family Drug Court in addition to their child protection case. This is not to be confused with criminal drug court where participation is not voluntary or a plea of guilt related to a drug offense has been entered. A form has been developed through Family Drug Court which allows for the release of information between multiple parties and agencies as long as this form is signed and completed by the individual client. This form is called the “Multiparty/Agency Authorization for Release of Information” and is provided through participation in Family Drug Court. Therefore, Department social workers can include any information obtained through Family Drug Court that pertains to the child protection case in reports to family court as long as the general release has been signed and completed. This release of information is in effect until the Family Drug Court case is dismissed or authorization is withdrawn in writing by the individual. This release does not pertain to a criminal drug court as mentioned above.

Cooperative Agreements
Historically, cooperative agreements were used as a basis for the sharing of confidential information. This is no longer the case. In Idaho Code 16-1617, "Cooperative Agreements" establish multidisciplinary teams, but do not specifically authorize disclosure of confidential information among team members. A cooperative agreement can re-enforce the need to keep information confidential, but the authority to disclose confidential information is based on Idaho statue, federal regulations, and Department rules regarding the use and disclosure of confidential information.

Guardian Ad Litem
The Department will permit a child’s guardian ad litem access to the record of a child they represent as necessary to perform the duties for which the guardian is appointed, with or without the consent of the child or the parents. Before being granted access to the record, the guardian ad litem must provide a copy of the order in which they were appointed as guardian ad litem. (See IDAPA 16.05.01.105 Department Records and the CASA/DHW Memorandum of Understanding.)

Searching for Relatives and Relative Involvement
The Fostering Connections Act (P.L. 110-351) requires the Department to identify and provide notice to all adult relatives of a child within 30 days after the child is removed from the custody of the parents. This requirement necessitates relatives be contacted to determine if they can be resources for the child, and to what degree. In order to do this, some disclosure is necessary based on minimally necessary and “need to know” principles.

Information to Be Shared with the Resource Parents of Children in Foster Care
In preparation for the possible placement of a child in a resource home, the social worker will provide the prospective caregiver with sufficient information to make a decision regarding their willingness and ability to take a child into their home and provide proper care. Although this information follows the principles of "minimally necessary" and "need-to-know", information disclosed to resource parents must be sufficient for the care of the child.

For example, informing a resource parent of the fact that a child had a history of sexual abuse might not be sufficient to adequately care for the child. A resource parent might also need to know how long ago the abuse occurred, specifics about who the abuser was, the circumstances of the abuse, and any additional needs related to supervision of the child and any other children in the home. This information can help the resource family to manage trigger situations with the child and support the child's efforts to heal.

IDAPA 16.06.01.405.02 specifies that the following information must be provided to the caregiver:

- The medical history of the child including known medical, health, and dental problems or needs, current medications, the names and addresses of the child's health providers, information concerning the immunization status of the child, and insurance and medical card information; and information about the child's individualized and unique needs;

- Any educational, developmental, or special needs of the child. This would include an educational history of the child, including needs and details of the child's individualized educational plan when the child is receiving special education services, and the name and addresses of the child's educational providers;

- A copy of the child's portion of the service plan including any visitation arrangements and all amendments or revisions; case history of the child, including how the child came into care; the child's legal status; the permanency goal for the child; a history of the child's previous placements; and reasons for placement changes, excluding information that identifies or reveals the location of any previous foster or relative resource home without their consent; and

- Other relevant background information of the child, including the child's history and past experiences and reasons for placement into alternate care; the child's strengths, interests, talents, likes and dislikes; cultural and racial identify and practices; information about the child's current functioning and behaviors; information about any behavior problems including fire setting; any prior criminal history; perpetration of sexual abuse, destructive behavior and substance abuse habits; and information necessary for the adequate care and supervision of the child, etc.

Confidential information to the prospective resource parent shall be given verbally. The Department social worker shall document the disclosure of confidential information in the case file. In the case of an emergency placement, or in situations where all of the above-referenced information may not be available, the social worker shall provide any known information to the caregiver verbally as it becomes available. Additionally, information about the child is documented in the child's medical and social information form and in the Alternate Care Plan, which are shared with resource parents.

When disclosing information to resource parents, CFS social workers should inform resource parents that the information is confidential and should not be redisclosed. (Redisclosure is the act of sharing or releasing information that was received from another source. This occurs when information is disclosed to a person or party, and then shared with another person or party who was not part of the initial disclosure.) When disclosing information to resource parents, CFS social workers should link the information being shared to "need to know" principles and how that information relates to the safety, permanency, and well-being of the child.

Information Disclosed to Resource Parents for Adoption of Foster Children
Adoptive parents are given information about the child(ren) they are considering for adoption, which may include evaluations and assessments of the child(ren) (see Adoption Disclosure Form). There are times when documentation relevant to the child also involves the birth parents or other individuals, such as information contained in the child's treatment records. Information is de-identified when it is related to an individual other than the child being adopted.

Birth parents are given the opportunity to sign a release allowing for their identifying information on the Child and Family Social and Medical History Form to be disclosed to adoptive parents. The release also allows for this information to be disclosed to the child when the child reaches the age of majority if the child were to request the information in the future.

Resource Parents as Mentors
Resource parents have a collaborative role in building positive alliances with the parents of children in their care. Early collaboration between resource parents and birth parents can benefit the well-being of children as well as support timely permanency. Therefore, information such as names, phone numbers, and addresses of both birth parents and resource parents will be shared unless the Department determines there is a safety issue or concern which necessitates this information be withheld, or parental rights are terminated.

When information is exchanged to facilitate visitation or contact with a child, the Department social worker should review with both resource parents and the child's parents mutually agreed upon parameters. For example, when birth parents and resource parents exchange addresses and phone numbers in order to facilitate increased parent/child contact, resource parents and birth parents might agree that phone calls to the

foster home only occur between 6:30 and 7:30 P.M. on school days and that neither resource parents nor birth parents drop by unannounced.

Disclosure of Resource Parent or Relative Caregiver Identifying Information
Identifying information regarding resource parents or relative caregivers is confidential. However, identifying information, including names, addresses, telephone numbers, and primary language used may be disclosed when appropriate and necessary for the delivery of child welfare services, and may not be redisclosed without that individual's consent.

Examples of persons with whom disclosure of resource parent/relative caregiver identifying information may be appropriate are:

- The child's teacher(s) or school officials;
- Child's medical providers;
- Other service providers;
- Court personnel;
- Court appointed advocates; and
- Statewide foster parent associations or other foster parent groups recognized by the Department

Identifying information, such as the names, telephone numbers, and addresses will be exchanged between resource parents when siblings in the custody of the Department have been placed apart from each other. This information will also be given to the children involved. This information is necessary to facilitate sibling visitation and contact. This information will be shared unless a decision has been made that the release of this information in not in the best interests of the children involved.

Information on the Internet Regarding Children and Youth in Foster Care
Currently there are multiple venues to share personal information via the Internet such as blogs, Facebook, MySpace, and other Internet community sites where there are no controls on confidentiality and privacy. Guidelines regarding what information can be posted to the Internet regarding children in state custody are necessary. CFS social workers and resource parents should not post identifying information about children and youth in foster care on the Internet, unless authorized by CFS. This includes pictures of foster children and youth. An example of an instance where CFS would permit a youth's information to be posted on the Internet would be for adoption recruitment purposes and then the posting would be done by CFS or by a CFS contractor.

In cases where the resource parent is a relative such as a grandparent, and displaying pictures of the child would be a normal part of the relative's role and relationship to the child, pictures and information related to the child is permissible as long as it does not include information that would disclose that the child is in foster care.

Youth Consent
There are specific confidentiality requirements for information related to mental health treatment and treatment records; substance abuse treatment and treatment records; and contraceptives, and infectious, contagious, or communicable diseases of youth,

depending on the youth's age. Youth have specific rights related to consent for treatment or disclosure of treatment records (even to parents and caregivers), and depending on the youth's age, the youth may need to provide their consent for the release of those records unless the information is requested through a court order.

Mental Health

Youth fourteen years or older have the right to obtain mental health treatment without parental consent (Idaho Code 66-318(b). They must also consent to the disclosure of mental health treatment records, even if that disclosure is to their parents (Idaho Code 16-2428(1).

A youth fourteen or older, who refuses to provide consent for disclosure, may be counseled by the CFS social worker as to the reasons why disclosure may be beneficial. There are instances where information is not held confidential, such as if the child is deemed a danger to themselves or others and information must be exchanged in order to assure the safety of the child or others, or when the information is requested through a court order.

Information related to children under the age of fourteen can be shared with parents, and also with caregivers if it is determined the information would be necessary for the child's care.

Substance Abuse Treatment Records

Substance abuse information is held at a higher standard of privacy than the Department's privacy practices or "need to know" principle. The confidentiality of alcohol and drug abuse patient records are governed by the Code of Federal Regulations in 42 CFR part 2 and has several provisions that must be followed. It requires a court order or the signed authorization of the individual to release that individual's substance abuse treatment records. A program providing substance abuse service may not identify to a person outside the program that a patient attends the program, or disclose any information identifying a patient as an alcohol or drug abuser unless:

- The patient consents in writing;
- The disclosure is allowed by a court order; or
- The disclosure is made to medical personnel in a medical emergency or to qualified personnel for research, audit, or program evaluation.

Information sought from substance abuse treatment providers could include, but is not limited to assessment and diagnosis, treatment recommendations, drug test results, compliance and progress in treatment, and aftercare recommendations.

Although drug and alcohol treatment records that have been released cannot be redisclosed, this information may be re-released within the Department from one program to another, as the Department is considered one agency for the purposes of information sharing. However, the principles of "minimally necessary" and "need to know" would still apply.

If the person seeking substance abuse treatment or rehabilitation is sixteen (16) years of age or older, the fact that they sought treatment or rehabilitation service shall not be reported or disclosed without authorization by that individual. This restriction also applies to disclosure of this information to the parents or legal guardian of the youth (Section 37-3102, Idaho Code, and 42 CFR 2). Under the code of federal regulation 42 CFR part 2, the individual under 16 refusing to provide that information will be counseled as to the benefits of involving their parents or legal guardian in their treatment or rehabilitation.

CFS social workers could consider pursuing an order from the court for disclosure of substance abuse treatment or rehabilitation if the individual refuses consent and the sharing of the information is deemed necessary for the care and safety of the child.

When an Individual Requests to Review Their Record

When a CFS social worker is asked by an individual how they can access their record, the social worker should refer them to the information located on page 1 in The Notice of Privacy Practices. This notice describes an individual has a right to review and copy their information.

When information is requested, only information that pertains to that individual or an individual with whom they are legally responsible for will be released. Information that pertains to other individuals will be redacted (blacked out). For example, when parents of a child are divorced, they will not receive information that pertains to the other parent.

IDAPA 16.16.05.01.125 states that a child 14 years of age or older can review and obtain a copy of their record as it pertains to them. The child would complete the same request for record form mentioned above. Some information will not be disclosed to the child, such as:

- Information in the record that pertains to other individuals, such as family members, will be redacted.
- There will be no disclosure of information that is part of an ongoing investigation or related to adoption.
- Mental health information a physician or other mental health professional has noted that the disclosure would be damaging to the child.
- Health or other confidential information when a licensed professional has determined that disclosure is likely to endanger the life or physical safety of the child or another person.

Children under 14 may also have questions about their record. Department social workers can explain to the child what the record is for and the various types of documents kept in a file. Documents that require the child's signature can be reviewed with the child, or portions of the file that pertain to the child only and would help to resolve any concerns the child may have or satisfy their questions about the record.

Information Released in Error

When protected information is released to the wrong person, the social worker should immediately contact the individual who wrongfully received the information and request that the information be returned or deleted if electronic (including faxes). CFS requires the social worker to notify their immediate supervisor of the incident. The social worker should then contact the CFS privacy officer to identify a plan for mitigation, appropriate follow-up, and documentation of CFS's efforts. Depending on the circumstances and the information released, there may be a need to enter the accidental release of information as a disclosure of type "other" in the privacy database so it is available if the individual asks for an accounting of disclosures.

Any action taken not consistent with this standard must be pre-approved by the FACS Division Administrator or designee. The action, rationale and approval must be documented in the file.