

4. Confidentiality

Confidentiality is presumed. All information that identifies an individual client is confidential. The Department may not release or disclose client information, except as specifically authorized by the client in writing, by federal law, state statute, administrative rule, or as ordered by a court. Confidentiality policies apply to Child Welfare permanent and temporary employees, volunteers, and contractors of any child welfare program who either work at a DHS site or have access to any DHS database, case management software, or the GroupWise system for the State of Oregon.

A. Generally

Many laws apply to the information that exists in a child welfare file. Information from, or documents within, a child welfare file can rarely be shared in its entirety.

- *Use the DHS 2090, DHS Notice of Privacy Practices to inform clients about how DHS may use or disclose their information.*
- Obtain a signed authorization (DHS 2099) from the client if there is any question regarding whether a release of information is required. View the request as one of honoring and respecting the choice and dignity of your client, not as an impediment to providing services.
- In every situation in which information is shared, with or without an authorization, inside or outside of DHS, staff must take reasonable steps to verify the identity of the person receiving the information.



TIP
Child welfare staff should discuss any questions about individual confidentiality case situations not covered by the administrative rules or these procedures with their supervisor. If you have questions, you may also contact your local DHS Privacy Point person, a program consultant or the Central Office CAF Privacy Representative.

B. Maintaining Client Records

- Keep client records in the normal working areas of a DHS Child Welfare office.
- When not in use, keep client records and information appropriately secure.
- Stamp copies of information from client records "Confidential" before releasing.
- If mailed, send confidential material "certified" and "registered."
- Retrieve and destroy copies of client information used for ad hoc consultations.

C. Authorization for Use and Disclosure of Information – DHS 2099

A client gives written authorization for release of information by completing the DHS 2099, Authorization for Use and Disclosure.

Completing the 2099

- This form should be completed in person with the client whenever possible to facilitate

discussion, case planning, and assuring the client understands the form before signing. Answer any questions the client has about the 2099 and explain to the client the client's right to request limitations on the disclosure of their information.

- Use only one record holder per form. The form must include the signature of the individual on the form.
- List the specific purpose for which information will be disclosed. Do not disclose information beyond the purpose listed on the DHS 2099.

For complete information on completing the DHS 2099, see the DHS 2099 I (Self-Guided Instructions for Completing the "Revised" Authorization for Use and Disclosure of Information Form DHS 2099)

<http://dhsforms.hr.state.or.us/Forms/Served/DE2099i.pdf>

D. What if the Client Refuses to Sign the Authorization?

- Talk through with clients what specific objections they have to the release and why. Explain to them, if necessary, how they will benefit and why it is helpful to the Department to be able to receive and share certain information about them.
- If, following that conversation, clients still do not want to authorize disclosure of their information; explain that is their right; however, DHS will be requesting a Court Hearing for assistance in making that determination.



TIP

If you believe that an outside agency, organization, or business is incorrectly citing confidentiality laws as a reason to withhold information that you need, you may contact the DHS Privacy Office or your Cluster Privacy Coordinator for assistance.

E. Revocations (or Cancellations) of Authorizations

- Treat a valid revocation similarly to the situation of a client who refuses to sign an authorization.
- Write the method and date of the cancellation on the authorization form, add the current date if different from the cancellation date, initial the cancellation entry, and place the authorization form in the client file.



TIP

An oral revocation about A&D information is valid. For all other information, the revocation request must be in writing.

F. Requests to Restrict Use or Disclosure of Client Information

- Use the DHS 2095, *Restriction of Use and Disclosures Form*, for a client who requests a restriction on use or disclosure of client information.
- DHS is not obligated to agree to a restriction; if necessary seek the Court's assistance in making this decision.
- When *denying* a client's request, complete the bottom portion of the DHS 2095 and send a copy of the DHS 2095 to the CAF Privacy Representative.

G. Use of Information within DHS

Definition: “Program Use” refers to the sharing of client information within the child welfare program or the sharing of information between program staff and DHS administrative staff that support or oversee the program, such as the exchange of information between a caseworker and Central Office Child Welfare staff.

- *Program* use of information is permitted without a written authorization from the client.

Definition: “Cross-Program Use” refers to the sharing of information about a child welfare client with another DHS program, such as Self Sufficiency, OMAP, or Vocational Rehabilitation.

- Sharing of client information without a client’s authorization is permitted in the following situations:
 1. As necessary for the administration of Child Welfare programs;
 2. For mandatory reporting of child abuse; or
 3. Child Welfare is a member of the local county multi-disciplinary child abuse team as statutorily defined; **and** the information shared is necessary for the prevention, investigation and treatment of child abuse.

Unless the sharing of information is for a purpose described above, you would obtain an authorization to share information for all other situations.

EXCEPTION: Cross-program use of health, substance abuse, mental health, and vocational rehabilitation records **require written authorization** and such use is limited to the particular program areas named on the authorization form.

H. Further Disclosure (Re-disclosure) of Information

Definition: Further disclosure means any use or disclosure of information obtained under an authorization form either with any program in DHS or person or entity outside DHS not listed on the authorization form; or for any purpose not listed on the authorization form.

- If information received by the Department is confidential or privileged under state or federal law, do not make a *further disclosure* to another person or entity unless the client provides written authorization for disclosure of that information or another exception applies as listed in section “I.”
- If no exception applies, prior to *further disclosure* of information, have the client fill out, sign and date an authorization for release of information form (DHS 2099) for that disclosure.
- Do not share medical records obtained from a third party for *cross-program* purposes, or redisclose these records to another person or entity outside DHS unless permitted under the original authorization, another exception applies, or you obtain a new authorization that covers the redisclosure.



TIP

In no case should a caseworker release any information about a child welfare case to a member of the media or an elected office (or their office) without supervisory approval and notification to the DHS Communications Office. While much information about child welfare cases may go outside the agency, supervisory and administrative staff, not individual caseworkers, handle these types of disclosures.

I. Situations in Which a Written Authorization is Not Required

Here are some examples:

- Disclosures necessary to prevent, investigate, or treat child abuse or neglect (do not use this exception to disclose HIV or A&D treatment information).
- Disclosures to the Department of Justice, law enforcement officers and district attorneys' offices needing information for child abuse assessments, criminal investigations, civil and criminal proceedings connected with administering the agency's child welfare programs.
- Disclosures to members of a child protection team or consultants involved in assessing whether or not abuse occurred and determining appropriate treatment for the child and family.
- Disclosure to the public if a child in the legal custody of DHS is abducted or missing, and is in danger of harm or a threat to others, if the disclosure is limited information to the extent necessary to identify, locate, or apprehend the child, including the child's name, description, or that the child may pose a threat to the public or himself or herself.
- Disclosure of information when DHS believes in good faith that the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and the report is to a person reasonably able to prevent or lessen the threat, including the target of the threat. For example, if DHS believes a person to be suicidal, information may be released without authorization to a mental health provider.

Other examples include:

- If Child Welfare has information that, in the judgment of the caseworker, indicates a clear and immediate danger to another person or the public, Child Welfare must disclose the information to the appropriate authority and the person or entity that is in danger from the child.
- Disclosure of health or treatment information is being released for the purposes of treatment, payment, or health care operations.
- Information about a specific client released to that client or the client's personal representative.
- Disclosure of information to conduct any investigation, prosecution, or criminal or civil proceeding in connection with administering DHS programs.
- Disclosure of information for any legally authorized audit or review by a governmental entity in relation to administering DHS programs, including the Office of Children's Advocate (Governor's Advocacy Office).
- Disclosure to DOJ for legal advice.
- Disclosure of information to the extent needed to provide emergency medical treatment, including A&D or mental health treatment.
- Disclosure when DHS has a court order signed by a judge. A subpoena is not a court order.
- Disclosure to DOJ Support Enforcement, to the extent necessary to locate children or

absent parents, and to establish support for children in substitute care.

- Disclosure to report suspected child abuse. If necessary, substance abuse treatment information may only be shared within child welfare in order to make an initial report of suspected abuse of a child. Mental health records are not required to be part of mandatory child abuse reporting.

J. Disclosure in Common Situations

The following provides some examples of common situations:

State and federal agencies

- Subject to the minimum necessary standard, client information may be disclosed without a written authorization to state and federal agencies such as the Department of Justice, Secretary of State Audits Divisions, that provide administrative support or oversight to the DHS program whose information is being disclosed.

Alcohol and drug (A&D) and mental health (MH) providers, managed care plans and medical providers.

- No authorization is required to provide sufficient information to accomplish a referral on behalf of a client.
- No authorization is required to provide information necessary for activities related to payment, including billing and collection.
- Obtain an authorization to share substance abuse and HIV information for purposes of treatment. An authorization is not required to share other information for treatment purposes.
- Obtain an authorization to receive or provide information for purposes other than treatment, referral, or payment.

School officials

- An authorization is required to disclose information protected by confidentiality laws such as health, treatment, and domestic violence.
- No authorization is required to disclose child welfare information to the extent that such disclosure is necessary to provide services to the child or family.

Meetings with the client with others present such as child safety, Oregon family decision and community partner meetings

- Inform the client as soon as possible about the identity of all people in the room and their purpose in being there.
- Have a client sign an authorization that lists each person or entity represented in the room and allows the sharing of information for the purposes of case planning and resolution.

Law enforcement

- No authorization is required to make records available from mandatory child abuse reports and resulting investigations (except HIV status and substance abuse treatment information) to any law enforcement agency or a child abuse registry in any state for the purpose of subsequent investigation of child abuse.

Research

- Obtain approval from the designated CAF manager to approve research requests for the specific person or organization and their research subject before providing access to Department records for research purposes.
- Do not allow individuals with access to records for research purposes make a copy of the record.

K. Requirement to Track Certain Disclosures

Procedure

- Use the DHS 2097 form (Disclosures of Protected Health Information) for any disclosures of protected health information (PHI).
- Log the following disclosures on the DHS 2097:
 1. Personal health information disclosed in response to mandatory child abuse reporting laws to an entity authorized by law to receive such a report.
 2. Personal health information about an individual that is ordered to be disclosed pursuant to a court order in a court case or other legal proceeding. Include a copy of the court order with the accounting of the disclosure.
 3. Personal health information about an individual provided to law enforcement officials pursuant to a court order. Include a copy of the court order with the accounting of the disclosure.
 4. Personal health information about an individual provided by DHS staff to avert a serious threat to the health or safety of the person or others.
 5. Personal health information about an individual that is disclosed pursuant to a Public Record request.



Disclosures that are not required to be listed on the DHS 2097 include those that are:

- *Authorized by the client.*
- *Made to carry out treatment, payment or health care operations.*
- *Made to the client.*
- *Made to persons involved in the client's health care.*
- *Made to correctional institutions or law enforcement officials having lawful custody of an inmate.*

L. Withholding and Redaction of Client Records

Procedure

- Review client records for redaction prior to access or disclosure.
- Copy the original record, black out with a permanent marker information pertaining to other individuals and the other information to be withheld, and make a copy of the redacted record that is to be released.
- Unless the information is being submitted for an in-camera review, redact the following information:
 1. Names, social security numbers, dates of birth, addresses and phone numbers of all third parties.
 2. All medical, mental health, substance abuse, and vocational rehabilitation records pertaining to someone other than the individual.
 3. Any records relating to domestic violence.

If information requested is being withheld, indicate at an abstract level the nature of the document or information withheld: e.g. psychotherapy notes of Dr. Jones, June 2003.

M. Access by and Disclosure to Clients, Representatives, and Family Members

Client access to their own information

Clients who are age 18 or older or legally emancipated have a right to access most of their records. They will not have access to mandatory reporting party information, information that would result in harm to themselves or others, identifying information about confidential informants, criminal investigatory material, materials related to pending litigation, psychotherapy notes, if a court order prohibits disclosure, adoption files, mental health records of third parties, and other public records law exceptions. DHS may require reasonable time to prepare the record of a client for review at the local office or disclosure by mail and may require that a person who seeks to review client records, review the records at an appointed time.

Procedure

- Use the DHS 2093 Access to Records Request Form if a client, or personal representative of the client (who has written authorization) requests access to a client case record.
- The manager or designee shall supervise access to records. The manager or designee must approve in writing to the disclosure of client information in each of the following situations:
 1. DHS currently is the child's legal custodian or guardian or DHS was the child's legal custodian or guardian when DHS authorized services.
 2. DHS currently is serving the child pursuant to an Interstate Compact or other interstate agreement.

3. The child is or was evaluated or provided services in conjunction with a DHS assessment following a protective service report, regardless of the child's legal status at the time.
- A staff person must be present while the client or authorized representative has access to original documents from the case record.
 - If DHS denies access to health or treatment information because of a good faith belief that disclosure could cause harm to the client or to another person, the decision to deny must be made by a licensed health care professional or other designated staff, and DHS must make a review of this denial available to the client. If the client wishes to have this denial reviewed, the review must be done by a licensed health care professional who was not involved in the original decision. *See Client Privacy Rights Policy AS-100-02.*
 - Do not permit a person authorized to review client records to review the complete case file if the complete file contains confidential information about other persons, including, but not limited to other clients, ex-spouses, battering partners, housemates, and half-siblings unless the other person provides written consent which meets the requirements in policy.
 - Third-party reports of family interaction, psychological and psychiatric evaluations or exams, arranged by Child Welfare for the stated purpose of case planning, may be made available to a client or other appropriate persons including foster parents when the worker has:
 1. Obtained a written authorization of the document from the originator, and
 2. Determined that release of information is in the child's best interest.
 - Approval of the manager or designee is required if a recipient of child welfare records seeks to re-disclose these records to another agency or organization. Approval of re-disclosure may require written client authorization or verification that an exception to the authorization requirement applies.

Family members

- Upon the request of the parent or legal guardian of a child (under age 18), determine whether any of the following grounds for denial are applicable: the child objects; disclosure would be contrary to the best interests of any child; disclosure could be harmful to the person caring for the child, including foster parents.
- Obtain informed written consent from the child if the child is age 14 or over prior to the release of mental health or substance abuse information to a parent or guardian.
- Obtain informed written consent from the child if the child is age 15 or over prior to the release of general medical information to a parent or guardian.
- Obtain informed written consent from a child of any age prior to the release of any information about sexually transmitted diseases or birth control to a parent or guardian.

Guardians

- Provide a guardian with the same access to the client file as the client in the areas the guardian has authority. If unclear, ask to see the order of court appointment.
 1. No authorization is required for that subject matter/information over which the guardian has authority. A guardian with full powers would have access to the entire file if the client has such access.

Attorneys and CASA

- No authorization is required for attorneys of record in any juvenile court proceeding for the child, child's parent, or child's guardian.
- No authorization is required for a court appointed special advocate (CASA) in any juvenile court proceeding.

N. Confidentiality of Information Gathered Under the Child Abuse Reporting Law

Information including documents, reports and records compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and may not be disclosed except as provided in 419B.035 which includes the following mandatory and discretionary disclosures:

The Department of Human Services shall make the records available to:

- Any law enforcement agency or a child abuse registry in any other state for the purpose of subsequent investigation of child abuse;
- Any physician, at the request of the physician, regarding any child brought to the physician or coming before the physician for examination, care or treatment;
- Attorneys of record for the child or child's parent or guardian in any juvenile court proceeding;
- Citizen review boards established by the Judicial Department for the purpose of periodically reviewing the status of children, youths and youth offenders under the jurisdiction of the juvenile court under ORS 419B.100 and 419C.005. Citizen review boards may make such records available to participants in case reviews;
- A court appointed special advocate in any juvenile court proceeding in which it is alleged that a child has been subjected to child abuse or neglect;
- The Child Care Division for certifying, registering or otherwise regulating child care facilities;
- The Office of Children's Advocate; and
- Any person, upon request to the Department of Human Services, if the reports or records requested regard an incident in which a child, as the result of abuse, died or suffered serious physical injury as defined in ORS 161.015. Reports or records disclosed under this paragraph must be disclosed in accordance with Public Record Laws. (This process will be through a formal public records request)

Chapter I - Child Welfare: Introduction

The Department of Human Services *may* make reports and records compiled under the provisions of ORS 419B.010 to 419B.050 available to any person, administrative hearings officer, court, agency, organization or other entity when the department determines:

- That such disclosure is necessary to administer its child welfare services and is in the best interests of the affected child, or
- That such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect children from abuse and neglect or
- For research when the Director of Human Services gives prior written approval.

Protecting the identity of Child Abuse Reporters:

DHS must protect the identity of the person(s) making a report of suspected child abuse:

- Identifying information about the reporting person(s), shall be removed from the records or shielded from view before records are viewed or copied.
- The name, address or other identifying information shall only be disclosed to a law enforcement officer or district attorney in order to complete an investigation report of child abuse.

O. Disclosure of Alcohol/Drug Treatment Information

Disclosure of Alcohol/Drug Treatment Information is greatly restricted. Federal laws about the sharing of alcohol and drug treatment information sets those records apart from others in terms of how DHS staff handle them. A client has the right to authorize use and disclosure of A&D treatment information to “DHS,” or to a specific program within DHS, such as Child Welfare or Self-Sufficiency, or to a specific person (name or title). A&D treatment information may be used only for the specific purpose listed on the DHS 2099. A client has the right to informed consent when filling out the DHS 2099. Federal laws prohibit re-disclosure of A&D treatment information without the specific authorization of the client.

Procedure

- Inform the client he or she may authorize the use of A&D treatment information to “DHS” as a whole or may limit disclosure to a specific program such as to the Child Welfare Program.
- Honor the client’s control of his alcohol and drug treatment information, even if DHS pays for the A&D evaluations or treatment.
- Require a client authorization before sharing protected A&D treatment information even in response to a request from an Assistant Attorney General, local District Attorney, or other legal representatives who are legal parties to child welfare cases, including as part of the preparation of “reasonable efforts” documentation and when meeting with legal representatives to formulate and review potential language for allegations which may be heard in court proceedings.
- Refer a requestor of protected A&D treatment information to the federal law regarding A&D information http://www.access.gpo.gov/nara/cfr/waisidx_04/42cfr2_04.html and

advise them a court order or a signed DHS 2099 is required.

- During a hearing, request that the judge issue a court order to allow the release of the protected A&D information if the judge concludes it is essential to child safety and necessary for necessary for the accurate presentation of the safety risks or formation of allegation language for the formal petition.

P. Domestic Violence

DHS Child Welfare is not permitted to disclose records and reports compiled under the child abuse reporting law if the sole purpose of the disclosure is to provide services to or protect an adult domestic violence victim. Any disclosure of the described records must be linked to protecting the best interests of the affected child; and necessary for either DHS to administer its child welfare services or for the purpose of assessing, preventing or treating child abuse or protecting children from child abuse.

Procedure

- Be mindful of safety issues for clients who are in domestic violence situations. If there is any likelihood that an abuser may access the file, proceed with caution.
- Before obtaining signed consent, discuss with the adult victim what information may be shared and what might happen with that information, including what could be included in a court document that the perpetrator may access. Explain the victim's confidentiality rights as well as the limits to those rights. Safety concerns may take precedent over confidentiality.
- Obtain signed release of information consent forms that specify to whom the information will be released and the type of information.
- Consider using sensitive case designation when necessary to protect the safety of both adult and child victims, especially if the perpetrator is an employee of DHS, law enforcement or a community partner. Follow legal and narrative guidelines to protect address confidentiality in case narratives and court documents. Inform victims what information will be included in the case file and what will be part of the court record that the perpetrator may access.
- Based on the facts of the case and CPS worker's professional opinion, the worker may invite the advocate to accompany the worker for the initial assessment for the purposes of assessment, prevention, or treatment of child abuse.



Q. HIV/AIDS

- Comply with ORS 433.045(3) and do not reveal to any person or agency that a client is HIV positive (a person who is HIV positive has been exposed to the AIDS virus) without a written client authorization. On the DHS 2099 form, the authorization must specifically identify HIV test results in section B and be initialed in the correct box below Section B.
- Obtain written consent of the infected person or a court order before disclosing HIV information when planning a court hearing or in open court.
- Take extra steps to hold HIV test results in strict confidence to avoid consequences of casual or inappropriate disclosure of information.
- Maintain information regarding a client's HIV status in a locked file separate from the case.
- Within Child Welfare, inform only those directly involved in case planning and who have a need to know, that a child or an adult who has a significant role in the child's plan, has AIDS or is HIV positive. Determine who has a need to know through a staffing.
- Advise all persons who have access to the medical information of their duty to safeguard the confidential nature of the information and keep it in strictest confidence.

R. Foster Care – Information Going to Foster Parents

- Provide foster families with enough information for them to ensure effective care for physical or mental health needs.
- If a foster parent is responsible for providing services, the foster parents may have access to client information required for case planning or to support casework.

S. Adoption Cases and Adoption Assistance Cases

Adoption records are confidential. Finalized adoption records are sealed and can only be opened in accordance with ORS 109.425 and ORS 109.500 or by court order. Identifying information from adoption files may be given to an adult adoptee or adult genetic sibling (age 21 or older) and to a birth parent when they have met the legal requirements of the Voluntary Adoption Registry as specified in ORS 109.425 to 109.507 and DHS Child Welfare Policy I-G.3.3, “Adoption Registry”. Disclosure of these records is permitted by court order or to an adult adoptee or adult genetic sibling (age 21 or older) and to a birth parent when they have met the legal requirements of the Voluntary Adoption Registry as specified in ORS 109.425 to 109.507. Records and information obtained or created by Child Welfare for the purposes of determining eligibility or making payment for adoption assistance are confidential.

Procedure

- The adoption manager or designee may approve the release of non-identifying information from the files to the child or to the adoptive parents or their designee to provide information about the child's early history or familial history.
- Do not disclose or release identifying information to anyone regarding the birth parents of a child who is placed for adoption, including any information about a child placed for adoption that will link the child to the birth family or the birth family to the child.

- Do not reveal the whereabouts or new identity of a child to anyone seeking information about the child by his or her birth name, except as otherwise provided by law.
- Do not disclose information about adoptive placements.
- Do not use or disclose information obtained or created by Child Welfare for the purposes of determining eligibility or making payment for adoption assistance except for purposes directly connected with the administration of the adoption assistance program.
- Only the central office adoption staff shall have access to files with information about adoption assistance.

T. Criminal Records, Law Enforcement Records, Police Reports

- A police report on a closed child abuse investigation becomes part of the child welfare file. Only DHS (not law enforcement) has the authority to release a police report connected to a child abuse investigation that is closed.
- Information from a police report on a closed child abuse investigation is kept in the case file, and may be released to all parties connected to a child welfare case.
- A police report on a closed investigation regarding an adult can only be released by law enforcement or with law enforcements approval.
- Information reports from the Law Enforcement Data System (LEDS) are for review only and are never to be placed into a child welfare file.
- Do not disclose the record of an arrest or the report of a crime while there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim.
- Do not disclose criminal investigatory material and information that would identify confidential informants. Its disclosure requires both authorization from law enforcement as well as the branch manager or designee.

U. Juvenile Court Documents in Child Welfare Files

Definition: The juvenile court “legal file” includes the summons, the petition, and all papers in the nature of pleadings, motions, orders of the court and other papers filed with the court.

The following information in the file of the juvenile court is not confidential and must be disclosed upon request:

- The name and date of birth of the child.
- The basis for the juvenile court’s jurisdiction over the child.
- The date, time and place of any juvenile court proceeding in which the child is involved.

Procedure

- Determine if the information is considered confidential.
- Determine if the requestor is a permitted recipient of the information.

V. Subpoenas and Court Orders

A subpoena is not a court order. A court order is signed by a judge and a subpoena is signed by an attorney. The Department must comply with a court order to provide testimony or documents unless the Department is able to persuade a judge to amend or rescind the order. In response to a subpoena, the Department must file written objections within 10 days or less or appear to present objections in court (or convince the attorney to drop the subpoena), but a subpoena alone does not require testimony or release of documents. If the time period to object to a subpoena is not waived, there must either be a court order or a valid written authorization from the client for the Department to release documents or provide testimony.

Procedure

- Follow or legally dispose of court orders and subpoenas originating in Oregon.
- Date stamp any subpoena, summons or other order received in a Child Welfare office. Immediately deliver to the designated person who reviews and decides needed follow-up.
- Respond to orders within the time allotted.
- Report all orders including juvenile orders for access to child welfare client records to the supervisor.
- Upon receipt of a summons or subpoena in non-juvenile civil matters or criminal proceedings, notify a supervisor.
- Notify the court immediately when the time to respond to a court appearance is less than 24 hours or otherwise is unreasonable (i.e., travel distance or other major scheduling problems), and ask to reschedule. Contact your AAG if the scheduling problem cannot be resolved.
- Contact the AAG immediately if served with notice to appear and give a deposition.
- When the caseworker is subpoenaed to appear before a judge at least one of the following must be true to testify or release client information in a judicial proceeding:
 1. The proceedings are directly connected with administering a child welfare case; or
 2. A judge directs you to provide the information.
- If a case record or a worker is subpoenaed and the subpoena directs the record or worker to provide documents or appear in a deposition or an attorney's office or in an administrative hearing where a judge will not be present, do the following:
 1. Contact the AAG and fax a copy of the subpoena to the AAG. Check the client file to see if the client has signed an authorization to release information to the attorney, and fax any releases that may apply. Note that a release in the file may not cover the scope or purpose of the request.
 2. The Department may file written objections or seek to quash the subpoena. If only documents are requested, do not provide them in the absence of a court order or valid written, client authorization or specific direction from the AAG.



TIP

Talk to your supervisor if there is a question regarding a subpoena or a court order. A court order or subpoena from another state may be binding in Oregon. Contact your AAG immediately upon receipt of such documents.

3. If a subpoena for your testimony is not quashed, the person subpoenaed should appear as directed by the AAG.
- If a worker or the case record is subpoenaed for a grand jury and the proceedings are not directly connected to administering the Department's programs, or the client has not given written authorization for the release of specific information, immediately talk to a supervisor.
 - Notify a supervisor and contact a AAG in the following situations:
 1. When served with a motion and order to show cause why the person should not be held in contempt of the court.
 2. When an order or subpoena appears to conflict with the rules or the best interest of a client.
 3. When questions of child rights, confidentiality, proper service or court authority arise.
 4. When providing records to attorneys, which contain information, which would be harmful to a child if the attorney released it to his or her client. The AAG or DA determines whether to request a protective order restricting the attorney from further releasing the information.
 - When required to testify or present records, which are confidential or exempt from disclosure, read the following statement to the court prior to testimony.

Your honor, I have been advised by legal counsel to inform this court that state law prohibits the disclosure of information contained in DHS child welfare files, either through release of records or testimony unless such disclosure is directly connected to the administration of the child welfare laws. Violations of disclosure could subject the agency to criminal penalties. The following is a copy of some of the statutes making the information confidential and privileged from disclosure. Information from the files could be subject to further state and federal restrictions on disclosure depending on the contents of the child welfare file. Because of these restrictions on disclosure, it is my understanding that I cannot testify unless ordered to do so by the court. (Supply list of supporting state statutes below).

ORS 40.270: provides that a public officer shall not be examined as to public records determined to be exempt from disclosure under ORS 192.501 to 192.505.

ORS 192.502(9): exempts records made confidential by state law from the Public Records Laws.

ORS 192.502(8): exempts records made confidential by federal law from the Public Records Laws.

ORS 409.225: provides generally that DHS shall not disclose information contained in child welfare files unless DHS receives consent by the client, or unless directly connected to the administration of the child welfare laws.

ORS 419A.255: provides that records and files submitted to the juvenile court are confidential.

ORS 419B.035: provides that the records of child abuse investigation are confidential, with limited exceptions. ORS 419B.035(2) provides that even when child abuse reports must be disclosed, the name, address or other identifying information about the person who made the report shall not be released. Violation of the restrictions on disclosure of child abuse reports is a Class A violation.

HIPAA and ORS 179.505, 433.045: Provides that medical and psychological records are protected information disclosable only in certain circumstances.

42 U.S.C. 290dd-2; ORS 430.399(5): Provides that records regarding drug and alcohol treatment may not be disclosed without the patient's consent or with a court order that includes specific findings.

Role of the Supervisor

- Inform employees about the duty to preserve the confidentiality and privacy of client information consistent with law and policy.
- Verify that employees are familiar with DHS privacy policies and Child Welfare confidentiality policies and procedures, and that employees attend required training sessions on these topics.
- Evaluate whether to approve the release of investigatory information compiled for criminal law purposes.
- Evaluate whether AAG consultation is necessary in the handling of subpoenas or other legal motions.
- Evaluate releases of information to the elected officials and media, in consultation with Central Office staff.

Forms and References

Forms

- DHS 2090, Notice of Privacy Practices
<http://dhsforms.hr.state.or.us/Forms/Served/DE2090.pdf>
- DHS 2093, Access to Records Request Form
<http://dhsforms.hr.state.or.us/Forms/Served/DE2093.pdf>
- DHS 2094, Amendment of Health Record Request Form
<http://dhsforms.hr.state.or.us/Forms/Served/DE2094.pdf>
- DHS 2095, Restriction of Use and Disclosures Request Form
<http://dhsforms.hr.state.or.us/Forms/Served/DE2095.pdf>
- DHS 2096, Accounting of Disclosures Request Form
<http://dhsforms.hr.state.or.us/Forms/Served/DE2096.pdf>

- DHS 2097, Disclosures of Protected Health Information
<http://dhsforms.hr.state.or.us/Forms/Served/DE2097.pdf>
- DHS 2099, Authorization for Release of Information
<http://dhsforms.hr.state.or.us/Forms/served/DE2099.pdf>

References - DHS Policy

- AS-100-01, General Privacy
- AS-100-02, Client Privacy Rights
- AS-100-03, Uses and Disclosures of Client or Participant Information
- AS-100-004, Minimum Necessary Information
- DHS Child Welfare Policy I-A.3.1
- DHS Child Welfare Policy I-B.1.2
- DHS Child Welfare Policy I-G.3.3, “Adoption Registry”



Oregon Administrative Rules

- 333-012-0270
- 410-014-0000 to 410-014-0070
- 413-010-0035 to 413-010-0075
- 413-040-0400, 413-040-0450
- 413-130-0300 to 413-130-0360

Oregon Revised Statutes

- 7.211
- 109.425 – 109.507
- 124.050 - 124.095 (Elder abuse)
- 135.855 (criminal case information)
- 179.505 (Disclosures of written accounts by health care services provider)
- 192.501
- 409.225
- 419A.255
- 419A.262
- 419B.005 – 419B.045 (Child Abuse)
- 430.735 - 430.765 (Mentally or developmentally disabled person abuse)
- 432.420

