

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 11 CHILD WELFARE SERVICES PROGRAMS

CHAPTER 1601

CONFIDENTIALITY

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§17-1601-1 Purpose. The purpose of this chapter shall be to specify the conditions under which the department of human services, social services division, child welfare services branch (DHS-SSD-CWSB), may disclose information gathered and maintained by the child welfare services branch (CWSB) related to:

- (1) Individuals who are subjects of a child abuse

- or neglect report investigated by the CWSB;
- (2) Individuals who are provided services by the CWSB; and
 - (3) Any other information gathered and maintained by the CWSB, including but not limited to foster home licensing records. [Eff DEC 09 2004] (Auth: HRS §§346-10, 346-14, 350-1; 45 C.F.R. §§205.50, 1340.14) (Imp: HRS §§346-10, 350-1, 587-81; 45 C.F.R. §§205.50, 1340.14; 42 U.S.C. §5106a)

§17-1601-2 Definitions. For the purposes of this chapter unless the context otherwise indicates:

"Applicant" means a person who has applied for a service or payment from the department.

"Authorized recipient of confidential information" means those entities authorized by departmental rules, state or federal statute, or court order to receive information contained in the reports and records maintained by the department.

"Child" means a person who is born alive and is less than eighteen years of age.

"Child welfare services branch" or "branch" means the branch within the department, which administers the child welfare service programs.

"Department" means the department of human services.

"Disclosure" means the release of confidential information by the department.

"Guardian ad litem" means a person appointed by the court under section 587-34, HRS, whose role is to protect and promote the needs and interests of the child or a party in a court hearing pursuant to chapter 587, HRS.

"In camera" means a review of the records by the presiding judge prior to the release of the record or any portion of the record to the parties in the case.

"Legal custodian" means the child's parent(s), permanent custodian(s), legal guardian(s), or other entities who have legal and physical custody of the child.

"Near fatality" means an act that, as certified by a physician, places a child in serious or critical condition or would result in the child's death if untreated.

"Recipient" means a person who has received a service or payment from the department, including an

individual identified as a perpetrator of child abuse and/or neglect.

"Record or records" means all written, oral, or electronic information gathered and maintained by the department in its State central registry or in physical records, including but not limited to:

- (1) Reports of child abuse and neglect accepted by the department for further action;
- (2) Subsequent actions by the department, including but not limited to medical, psychological, psychiatric, or other agency reports as well as departmental contacts, assessments, or reports; and
- (3) Any record or information collected and maintained by the department that identifies or contains information regarding a person who is an:
 - (A) Applicant;
 - (B) Recipient of services from the department; or
 - (C) Foster parent, adoptive parent, legal guardian or permanent custodian.

"Re-disclosure" means the release of confidential information received from the department by the authorized recipient of the information. [Eff

DEC 09 2004] (Auth: HRS §§346-10, 346-14, 350-1, 578-15; 45 C.F.R. §§205.50, 1340.10) (Imp: HRS §§346-10, 350-1, 587-2; 42 U.S.C. §5106a; 45 C.F.R. §§205.50, 1340.14)

§17-1601-3 Maintenance of records. The department of human services, social services division, child welfare services branch, shall keep records to document information acquired in the administration of the child welfare services program, including but not limited to all reports of child abuse and neglect and other services provided by the child welfare services program. Information gathered by the department shall ? be kept in confidential records and files and shall not be used or disclosed except as provided for by this chapter. [Eff DEC 09 2004] (Auth: HRS §§346-10, 346-14, 350-1) (Imp: HRS §§346-10, 350-1, 578-15, 587-81; 45 C.F.R. §§205.50, 1340.14; 42 U.S.C. §5106a)

§17-1601-4 Disclosure of records. (a) All

records and information shall be confidential and unauthorized disclosure or re-disclosure shall be a violation. Records shall not be accessible for public inspection except as provided by this chapter. Disclosure of records shall be provided in accordance with departmental procedures; provided, however, that when the record contains information that the person is not authorized to receive, that information shall not be provided.

(b) Recipients of confidential information shall be bound by the same confidentiality restrictions as the department and shall maintain confidentiality and prevent unauthorized re-disclosure.

(c) The name of a reporter who requests confidentiality shall be disclosed only with the reporter's written consent or pursuant to a court order.

(d) Records containing communications between the department of the attorney general and the department shall not be disclosed as those communications are considered attorney-client privilege and are subject to release only by court order. [Eff DEC 09 2004] (Auth: HRS §§346-10, 346-14, 350-1.4; Pub. L. No. 104-235; 45 C.F.R. §§205.50, 1340.14) (Imp: HRS §§346-10, 350-1, 578-15, 587-81; 45 C.F.R. §§205.50, 1340.14; 42 U.S.C. §5106a)

§17-1601-5 Disclosure of information to applicants, recipients, or entities designated by the applicant or recipient to receive confidential information. (a) Except as specified in section (b), copies of the records and other information may be released to an applicant or recipient, or to the applicant's or recipient's designee in accordance with departmental procedures, provided that a signed, dated, written request or consent (authorization) to release information from the applicant or recipient is received specifying:

- (1) The specific information the branch is authorized to disclose;
- (2) The name of the individual or agency authorized to receive the information;
- (3) The purpose for which the information is being requested;
- (4) The applicant or recipient's social security number and birth date and address;
- (5) The expiration date, or expiration event that

relates to the applicant or recipient or the purpose of the authorization, and also specifying that if no expiration date or expiration event is specified the authorization shall expire one year from the date the authorization is signed; and

(6) Whether the information is desired through review or by receipt of reproduced copies of the information.

(b) Information requested for the purpose of conducting a child abuse/neglect clearance shall be requested on a department form.

(c) The identity of the person consenting to the release of information shall be authenticated in accordance with departmental procedures.

(d) Reproduced copies of information contained in the department's records, which the department is authorized to release, shall be provided at a cost related to the cost of reproduction, including but not limited to staff time to review, redact and duplicate the requested record. When the information is required for the purpose of presenting the applicant's or recipient's hearing appeal, there shall be no charge. In either case, actual postage cost shall be charged.

(e) Records and information concerning a child may be released to the child, legal custodian, guardian ad litem, or foster custodian as deemed appropriate by the department and in accordance with departmental procedures.

(f) The department shall permit the review of that portion of the record which pertains to the applicant or recipient or provide a copy of the portion of the record pursuant to Chapter 92F-23, HRS.

(g) Records shall be reviewed only in designated areas within the department's offices, in accordance with departmental procedures. The records or any part of the records shall not be copied or removed from the premises except in accordance with departmental procedures. [Eff DEC 09 2004] (Auth: HRS §§346-10, 346-14; 45 C.F.R. §205.50) (Imp: HRS §§92-21, 92F-21, 92F-22, 92F-23, 346-10, 346-14(10); 45 C.F.R. §205.50

§17-1601-6 Disclosure to third parties without consent or court order. Disclosure of all or a portion of the record without consent or court order shall be authorized when made pursuant to a legitimate state purpose and in accordance with 17-1601-4. A legitimate

state purpose shall include but is not limited to disclosure to the persons listed below unless otherwise specified in Public Law No. 104-235, 45 C.F.R. §§205.50, 1340.14(i)(2)(xi); 42 U.S.C §5106a and sections 17-1601-7, 17-1601-8, 17-1601-9 and 17-1601-10:

- (1) A court in the state for in camera review only;
- (2) Grand juries, when connected with the prosecution of a child abuse or neglect case;
- (3) Legally authorized governmental, civilian, or military entities investigating, prosecuting, or providing services to a child or family who is the subject of a report of known or suspected child abuse or neglect;
- (4) A person legally authorized to place a child in protective custody when that person reasonably suspects the child is being abused, neglected, or is at risk of imminent harm and the information is required in order to determine whether to remove the child;
- (5) Agencies or individuals authorized, contracted, or licensed by the department to assess, diagnose, care, treat, supervise, or provide services to a child or family who is, or has been, the subject of a report of abuse or neglect;
- (6) Multidisciplinary or other consultant teams under contract to or in arrangement with the department to give consultation to social workers or the department;
- (7) Licensed physicians concerned that a child under their care may be the victim of child abuse or neglect;
- (8) A child fatality review team or citizen review panel authorized by law;
- (9) A coroner or medical examiner who has reason to believe that a child has died as the result of abuse or neglect;
- (10) Federal, state, and local officials, and their agents responsible for administration, monitoring or auditing of child welfare services programs and legislation, including agencies administering programs under the Social Security Act for purposes of:
 - (A) The administration of federal or federally assisted programs which provide assistance in cash or in kind,

- or services directly to individuals on the basis of need; or
- (B) An audit or similar activity, conducted in connection with the administration of the social service program by any governmental entity that is authorized by law to conduct the audit or activity.
- (11) The Office of the Legislative Auditor for purposes of an audit authorized by law.
 - (12) Police departments, the prosecutor's office, the attorney general's office, the ombudsman's office, or any other state or federal agency when the disclosure is made for purposes directly connected with any investigation, prosecution, or criminal or civil proceedings conducted in connection with the administration of the department's social services, financial or medical assistance, and food stamp programs. Under this paragraph, disclosure shall be permitted for such purposes as:
 - (A) The detection, investigation, or prosecution of violations of applicable state and federal laws or regulations in connection with these programs, including any and all aspects of theft, fraud, deception, or overpayment;
 - (B) Departmental claims against estates of deceased recipients, or initiation of paternity and nonsupport actions by the department under Title IV-D of the Social Security Act (42 U.S.C. §§651-662); and
 - (C) Providing information to the ombudsman's office investigating complaints about the administration of social services, financial or medical assistance, and food stamp programs.
 - (13) Persons not otherwise listed, at the discretion of the department, to ensure the safety of a child or children subject to harm or threatened harm, or to secure services or benefits for a child or children subject to harm or threatened harm;
 - (14) An individual identified as a perpetrator of child abuse and/or neglect on whom an official departmental finding or disposition was made;

(15) Persons engaged in a bona fide research or evaluation project where prior written approval has been secured from the director specifying the limits and scope of the project;

(16) Disclosure to the public when:

- (A) The subject of the report has been criminally charged with committing a crime relating to the child abuse or neglect report;
- (B) A law enforcement agency or official, a state's attorney, or a judge of the state court system has publicly disclosed in a report, as part of his or her official duty, information regarding the investigation of a report, or the provision of services by the department;
- (b) (C) A legal custodian of the child, the alleged perpetrator, or other party has voluntarily made a public disclosure concerning a child abuse and neglect report, investigation of a report, or the provision of services by the department; or
- (D) The child named in the report is missing, has suffered a near fatality, been critically injured, or has died; and

(17) To an authorized state agency pursuant to a memorandum of agreement, for the purpose of conducting a child abuse and neglect clearance. [Eff DEC 09 2004] (Auth: HRS §§346-10, 346-14, 350-1; 45 C.F.R. §§205.50, 1340.14) (Imp: HRS §§346-10, 350-1, 587-81; Pub.L.No. 104-235, 45 C.F.R. §§205.50, 1340.14(i)(2)(xi); 42 U.S.C §5106a)

§17-1601-7 Restrictions against disclosure of proceedings and records relating to adoptions. (a)

All information, documents, and records relating to an adoption and filed in court shall be confidential and shall be released pursuant to section 578-15, HRS.

(b) Information, documents and records relating to an adoption but not filed in court shall be confidential and may only be released by the department in accordance with this chapter. [Eff DEC 09 2004] (Auth: HRS §§346-10, 578-15) (Imp: HRS §346-10; 45 C.F.R. §§205.50, 1340.14, 1355.21)

(2) §17-1601-8 Restrictions against disclosure of family court related material. (a) Records and information which have been submitted to the family court pursuant to chapter 587, HRS, may be released by the department pursuant to chapter 587-81, HRS, and in accordance with this chapter, unless otherwise ordered by the court.

(b) Except as allowed in 17-1601-6, the department shall not release records and information regarding family court proceedings not relating to chapter 587, HRS. An individual requesting the record or information shall be referred to the family court for release of that information. [Eff DEC 09 2004] (Auth: HRS §346-10) (Imp: HRS §§346-10, 587-81; 45 C.F.R. §§205.50, 1340.14)

§17-1601-9 Restrictions against disclosure of information relating to human immunodeficiency virus (HIV), AIDS related complex (ARC), and acquired immune deficiency syndrome (AIDS). (a) All records including all communication, or specific medical or epidemiological information contained therein, which identify any individual who has or has been tested for HIV, ARC, or AIDS, shall only be released pursuant to section 325-101, HRS, and in accordance with departmental procedures.

(b) Persons or entities receiving information under this section shall maintain confidentiality of the information subject to section 325-102, HRS, which provides civil penalties for the unauthorized disclosure of information relating to HIV, ARC, and AIDS. [Eff DEC 09 2004] (Auth: HRS §§325-101, 346-10) (Imp HRS §§325-101, 346-10; 45 C.F.R. §§205.50, 1340.14)

§17-1601-10 Restrictions against disclosure of substance abuse related material. (a) Records or other information concerning patients in an alcohol or drug abuse program, including their identity, diagnosis, prognosis, and treatment, shall be confidential and unauthorized disclosure shall be prohibited without:

- (1) The informed consent of the patient; or
- (2) A court order that contains the following

findings:

- (A) There is reasonable cause to believe the child has been abused or neglected;
- (B) Safety of the child must be ensured and treatment of the child and family must be provided;
- (C) Other ways of obtaining the information are not available or would not be effective;
- (D) Information shall be shared among those providing services, treatment, and care to the child and family; and
- (E) The need to share information to provide safety to the child and ensure appropriate treatment to the family outweigh the potential injury to the patient, the physician-patient relationship, and to the treatment services.

(b) A court order authorizing a disclosure shall:

- (1) Limit disclosure to those parts of the patient's records which are essential to fulfill the objective of the court order;
- (2) Limit disclosure to those persons whose need for information is the basis for the court order; and
- (3) Include such other measures that are necessary to limit disclosure for the protection of the patient, the physician-patient relationship, and the treatment services.

(c) If all of the requirements listed in subsections (a) and (b) are not met, the department shall not disclose or re-disclose any information concerning patients in an alcohol or drug abuse program. [Eff DEC 09 2004] (Auth: HRS §346-10) (Imp: HRS §§346-10, 587-81; 42 U.S.C. §290dd-2)

§17-1601-11 Applicant's and recipient's right to correct case record. Each applicant or recipient of services provided by the branch shall have the right to request to have their record amended by the department in accordance with Chapter 92F, HRS. [Eff DEC 09 2004] (Auth: HRS §§346-10, 346-14; (Imp: HRS §§92F-24, 92F-25)

§17-1601-12 Dissemination of material. All material sent or distributed to applicants or recipients of services provided by the branch, including material enclosed in envelopes containing checks, shall be limited to the administration of social services programs.

- (1) Mailing or distribution of holiday greetings, general public announcements, voting information, and alien registration notices shall be prohibited.
- (2) Material that may be of benefit to the health and welfare of applicants and recipients, such as announcements of free medical exams, availability of services or resources, notices to foster parents, and consumer protection information may be mailed or distributed.
- (3) Only the names of the persons directly connected with the administration of the social services program and identified in an official capacity with the department shall be contained in material sent or distributed to applicants, recipients, and providers.
[Eff DEC 09 2004] (Auth: HRS §§346-10, 346-14; 45 C.F.R. §205.50) (Imp: HRS §§346-10, 346-14; 45 C.F.R. §205.50)

§17-1601-13 Penalty. Any person who fails to safeguard confidential information or who violates rules governing the confidential nature of department information may be prosecuted for a violation pursuant to Chapter 346, HRS. [Eff DEC 09 2004] (Auth: HRS §§346-10, 346-14; 45 C.F.R. §205.50) (Imp: HRS §§92F-27, 346-11, 346-14; 45 C.F.R. §205.50)