

5101:1-37-01.1 Medicaid: disclosure of recipient information and confidentiality.

(A) All information and records concerning a recipient of medicaid or other medical assistance programs are confidential. No information shall be released to anyone except as provided in sections 5101.26 to 5101.28 of the Revised Code or as otherwise outlined in this rule pursuant to section 5101.30 of the Revised Code.

(B) Definitions:

- (1) "Medical assistance program" includes medicaid, children's health insurance program (CHIP), disability medical assistance (DMA) and refugee medical assistance (RMA).
- (2) "Medical assistance program recipient" means an applicant, recipient or former recipient of a medical assistance program.
- (3) "Administrative agency" means the county department of job and family services (CDJFS), Ohio department of job and family services (ODJFS) or other entity administering the medicaid program.

(C) Sharing of information.

In accordance with section 5101.30 of the Revised Code, information and records, but only the minimum necessary to fulfill the need for the sharing of information as allowed by this rule, concerning a recipient of medicaid may be released to the following:

- (1) A provider of medical services or assistance connected with medicaid and other medical assistance programs. Access to information under this paragraph is limited to information that is essential for the medical provider to render services or assistance or to bill for services or assistance rendered. Providers receiving this information may use this information only for the purpose set out in this paragraph and are subject to penalties set out in section 5101.99 of the Revised Code for unauthorized use of the information.
- (2) The department of aging, when investigating a complaint under section 173.20 of the Revised Code. Access to information under this paragraph is limited to essential information needed to complete the investigations.
- (3) Any private contractor, grantee, or other state or county entity, performing administrative or other duties on behalf of ODJFS or the administrative agency when in compliance with paragraphs (C)(3)(a) to (C)(3)(d) of this rule. Access under this paragraph includes but is not limited to exchange of information pursuant to section 307.986 of the Revised Code. Information that can be accessed under this paragraph is limited only to information needed for completion of the administrative or other duties on behalf of ODJFS/administrative agency (contractee):

- (a) There must be a signed, written agreement with the contractor, grantee, or entity, that establishes the purpose and scope of duties to be performed for the contractee.
- (b) The agreement shall contain language that the contractor, grantee, or entity may not use the information received pursuant to the agreement for purposes other than those set out in the written agreement.
- (c) The agreement shall include language which establishes that the contractor, grantee, or entity is bound by ODJFS rules and that disclosure of the information by the contractor, grantee, or entity in a manner not authorized by the rules is a breach of the contract and a violation of sections 5101.27 and 5101.99 of the Revised Code.
- (d) If sharing of information (including eligibility information) pursuant to the contract involves any program listed in paragraph (B)(1) of this rule, the following additional language in the contract is required:

 - (i) The contractor will use safeguards to prevent unauthorized uses/disclosures of the information;
 - (ii) The contractor will report any authorized uses/disclosures of the information to the contractee;
 - (iii) The contractor will provide the same obligations outlined in the contract to all subcontractors/agents;
 - (iv) The contractor will share all information received pursuant to the contract with the contractee;
 - (v) Should an individual seek information to which they are the subject, seek amendment of that information or an accounting of disclosures of the information which the contractor is holding as a result of this contract, the contractor shall immediately refer the individual to the contractee and notify the contractee of the request;
 - (vi) The contractor shall make available its internal practices, books and records relating to use and disclosure of information about individuals which were received pursuant to this contract to the contractee upon request and to the United States department of health and human services (HHS) for the purpose of determining the states compliance with the Health Information Portability and Accountability Act (HIPAA) and regulations and amendments promulgated by HHS for the purpose of implementing HIPAA;

- (vii) Upon termination of the agreement required by the provisions outlined in this rule, the contractee shall require that the contractor do one of the following:
- (a) Return all information received about individuals pursuant to the agreement and retain no copies of the information, except as directed by the contractee or required by law. Any information that the contractor retains must be extended the same protections outlined in the written agreement for as long as the information is maintained by the contractor; or
 - (b) Destroy all information received about individuals pursuant to the agreement and keep no copies of the information except as directed by the contractee or required by law. If the contractor or its agent destroys the information, the contractor shall provide documentation evidencing such destruction to the administrative agency.
- (4) The HHS, when exercising its role in overseeing implementation of the Health Insurance Portability and Accountability Act (HIPAA) or if authorized by other federal law.
- (5) Third parties, such as health insurers, requesting social security numbers for the purpose of determining the existence of health care coverage that may be liable to pay all or part of medical bills. Third parties receiving information may not use the information except for the purposes set out in this paragraph and unauthorized use of the information shall be subject to penalties set out in section 5101.99 of the Revised Code.
- (6) Any state licensing or certification authority while performing their statutory duties of conducting or assisting with investigations, prosecution or civil or criminal proceedings against medicaid providers, provided that any such licensing or certification authority agrees to be bound by the same rules and regulations regarding recipient confidentiality that binds ODJFS. To ensure agreement of confidentiality, these information requests and responses will be conducted solely between the requesting authority and the appropriate office within ODJFS.
- (7) A county child support enforcement agency (CSEA) when requesting relevant information needed to secure child support as outlined in rule 5101:1-3-10 of the Administrative Code.
- (8) State and local offices of women, infants and children program (WIC), child and family health services (CFHS), and the children with medical handicaps program (CMH). The information shared is limited to eligibility information for specific individuals or assistance groups receiving services from WIC.

CFHS and/or CMH.

(9) Public children services agencies (PCSA) when the administrative agency is to report known or suspected instances of child abuse and neglect of a child receiving medicaid or other medical assistance programs or when the PCSA needs information in order to conduct an assessment/investigation of a report of alleged child abuse or neglect, as outlined in rule 5101:2-39-51 of the Administrative Code. Instances of abuse and neglect situations exist when a child experiences physical or mental injury, sexual abuse, or exploitation, or negligent treatment or maltreatment under circumstances which indicate that the child's health or welfare is threatened.

(D) Recipient's rights regarding personal data.

The following requirements must be explained at the time of application for assistance or services and are included to protect the medical assistance program recipient's right to control personal data:

(1) Upon the request of any medical assistance program recipient, the administrative agency must make all data collected about that individual available to the individual unless precluded by law.

(a) The agency must supply an interpretation of the data if it is not readily understandable. If the individual feels that any data is incomplete or inaccurate, the individual has the right to include additional information in the their files.

(b) Medical, psychiatric or psychological information may not be released to the individual or his legal guardian if the administrative agency has reason to believe that its release may have an adverse effect on the individual.

(i) If the administrative agency has reason to believe that the release of medical, psychiatric or psychological information may have an adverse effect, the administrative agency shall release this information to a physician, psychiatrist or psychologist designated by the individual.

(ii) Once the individual provides expressed and informed consent, the administrative agency will send this information to the designated medical provider.

(iii) The medical provider will then determine whether the information should be disclosed to the recipient.

(2) Upon a medical assistance program recipient's request, the administrative agency must inform the individual about the types of uses of the personal

information, including the identity of any users usually granted access to the system.

(3) Upon any request for individual data through compulsory legal process, the medical assistance program recipient must be immediately informed of such request. In addition, the administrative agency must inform the court of the statutory and regulatory provisions against disclosure of information, if state or federal law precludes the release of the information. If the court still seeks the information, and if the information is not protected by any other privilege recognized by law, the administrative agency will furnish the specified information to the court itself along with the ODJFS policies for safeguarding that information. At the same time, the administrative agency must notify the individual that the information has been furnished to the court and must supply the individual duplicate copies of the information.

(4) Pursuant to division (D) of section 5101.27 of the Revised Code, the administrative agency may release information about a medical assistance program recipient if the recipient gives voluntary, written consent that specifically identifies the persons or government entities to which the information may be released.

(a) The consent must be directly for the purpose of the administration of medicaid or other medical assistance programs and whoever receives the information must be subject to the same or similar confidentiality standards as the administrative agency.

(E) Nondiscrimination.

(1) The administrative agency is responsible for rendering assistance without discrimination on account of race, religion, national origin, political beliefs, age, or sex in a manner consistent with the United States constitution, Social Security Act, Civil Rights Act, and the Constitution of the state of Ohio.

(F) Release of Information.

(1) When the administrative agency requests information from a third party, a signed release which is HIPAA compliant shall be obtained.

(2) When a third party requests information from the administrative agency, a signed release which is HIPAA compliant shall be obtained.

(3) A copy of the signed release must be included in the individual's file. In order for the release to be HIPAA compliant, it must contain all of the following:

(a) A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;

- (b) The name or other specific identification of the person(s) or class of persons authorized to make the requested use or disclosure of the information;
- (c) A description of each purpose of the requested use or disclosure of the information. The statement "at request of the individual" is a sufficient description of the purpose when an individual initiates the authorization and does not wish to provide a statement of purpose;
- (d) Expiration date or an expiration event that relates to the individual or the purposes of the use or disclosure of the information;
- (e) Statement that information used or disclosed under this authorization may be subject to re-disclosure by the recipient of the information and may no longer be protected from re-disclosure by this section;
- (f) Must be signed by individual or authorized representative, dated and a copy provided to signatory;
- (g) If signed by an authorized representative, a description of the representative's authority to act for the individual;
- (h) A statement of the individual's right to prospectively revoke the authorization in writing, and either a description of how the individual or authorized representative may revoke the authorization, or a reference to the department's privacy notice if it contains a description of how the individual or authorized representative may revoke the authorization;
- (i) A statement that treatment, payment, enrollment or eligibility for medicaid or other medical assistance programs cannot be conditioned on signature of the authorization unless the authorization is necessary for the determination of eligibility for medicaid.

(G) Confidentiality requirements for information from the social security administration (SSA).

- (1) The SSA sends information to ODJFS about Retirement Survivors Disability Insurance (RSDI) and Supplemental Security Income (SSI) beneficiaries who are medical assistance program recipients. ODJFS displays this information to the administrative agency using the CRIS-E data exchange screens. The ODJFS state verification and exchange system (SVES) provides electronic interface with the SSA. The interface allows the transfer of Title II (SSA RSDI benefits), Title XVI (SSI), and benefit earnings exchange record (BEER) information about employment (whether or not the individual is a participant of RSDI and/or SSI). SVES replaces the paper transaction request.

third party query (TPOY) between the state of Ohio and the SSA. The SSA limits use and disclosure of this SSA information.

(2) The Privacy Act of 1974 allows the SSA to release information to the administrative agency without a release of information from the beneficiary only as long as the information is for a "routine use" and for specified programs. Every use or disclosure of SSA information which is not routine or is not for an approved, specified program requires the prior written permission of the beneficiary or the SSA, respectively.

(a) The routine uses and approved programs for RSDI obtained from the beneficiary and earnings data exchange (bendex system) are: to determine eligibility for and administer medicaid, Ohio works first (OWF), disability assistance (DA), food stamps, Title XX social services, Title IV-E, child support and energy assistance.

(b) The routine uses and approved programs for SSI benefits obtained from the state data exchange (SDX) and SVES are: to determine eligibility for and administer medicaid, OWF, food stamps, DA, energy assistance, Title XX social services, Title IV-E, child support and interim assistance. SDX data may also be used to calculate the amount of a residential state supplement (RSS) payment and to monitor changes of circumstances of mandatory state supplement recipients.

(H) Disclosure, confidentiality, and physical safeguarding of SSA and IRS information.

(1) Whenever the administrative agency discloses SSA information received from the SSA to someone who is not an employee of the administrative agency, it must do so only for a routine use of an approved program. Additionally, it must disclose only the information needed to accomplish the purpose of the routine use.

(2) ODJFS may disclose SSA information to another state agency, provided it is for routine use for an approved program and only the needed information is disclosed.

(3) Although the administrative agency may obtain SSA information without a release of information from the beneficiary, they must keep a record any time they disclose this information to anyone who is not an employee of the administrative agency. This is true even though the disclosure is for a routine use.

(a) The required record of disclosure of SSA information must be kept in the individual case record and also in a centralized record-keeping system.

(i) The administrative agency must enter a notation about the disclosure in the case record. The notation must contain the date of

disclosure, the information disclosed, the purpose of the disclosure, and the person to whom the information was disclosed.

(ii) The administrative agency must maintain a centralized record keeping system, containing separate records for each source of data disclosed. The centralized record must contain the date of disclosure, the information disclosed, the purpose of the disclosure, and the person to whom the information was disclosed.

(b) The case record notation and the centralized record-keeping system must contain the date of disclosure, the information disclosed, the purpose of the disclosure, and the person to whom the information was disclosed. For the case record, the administrative agency must enter the notation about the disclosure. For the centralized record keeping system, the administrative agency must maintain separate records for each source of data disclosed.

(c) The record of disclosure must be retained for five years or the life of the application, whichever is longer. The disclosure records are subject to inspection by the SSA.

(4) The internal revenue service (IRS) sends unearned income information received from 1099 forms filed with that agency to ODJFS regarding public assistance applicants and recipients. This federal tax information is displayed on the CRIS-E screen data exchange inquiry resource/unearned income (DERS).

(5) Section 6103 of the internal revenue code (IRC) allows the disclosure of tax return information to federal, state, and local agencies by the IRS for use in their medicaid, OWF and food stamp programs. The return information is disclosed solely for the purpose of, and to the extent necessary in, determining eligibility for, or the correct amount of, benefits under the specified programs.

(6) IRS return information may not be disclosed to, exchanged with, or utilized by any other state agency. The administrative agency employees who are entitled to access tax return information generally must not disclose this information to any party outside the agency other than the taxpayer to whom the information relates or the taxpayer's duly appointed representative who has the explicit authority to obtain the tax return information.

(7) To the extent that disclosure of IRS information is necessary to verify eligibility for and the correct amount of benefits, including past benefits, such disclosure may be made only when there is no other means of verifying the unearned income information, and only to the extent necessary to verify the

unearned income information.

- (a) All administrative agency employees with access to IRS return information must have disclosure awareness training for safeguarding requirements and must be advised on an annual basis of IRS penalty provisions.
 - (b) The administrative agency must maintain a permanent system of standardized record keeping which documents requests for, and disclosure of return information. If redisclosure is authorized, the information disclosed outside the agency must be recorded on a separate list which reflects to whom the disclosure was made, what was disclosed, why and when it was disclosed.
- (8) The administrative agency must physically protect SSA and IRS information from unauthorized access. The physical record number of SSA and IRS information required to be safeguarded include, but are not limited to, the following:
- (a) Benefit earnings exchange record (BEER) information which contains federal wage information obtained from the SSA master earnings file;
 - (b) IRS information return master file which contains returns filed by payers of income such as dividends, interest and retirement income.
- (9) The administrative agency must:
- (a) Limit access to the data to only those employees and officials who need it to perform their official duties in connection with the approved programs.
 - (b) Store data in an area that is physically safe from access by unauthorized persons.
 - (c) Store and process magnetic tapes, screen prints and any electronic data in CRIS-E or any other computer system used in such a way that information cannot be retrieved by unauthorized persons.
 - (d) Advise all personnel who will have access to the data of the confidential nature of the information, the safeguards required, and the criminal and civil sanctions for noncompliance contained in federal and state statutes.
 - (e) Permit the SSA and internal revenue service to make onsite inspections to ensure that adequate safeguards are being maintained.
 - (f) Ensure that when interactive interviews using the CRIS-E system occur in

the presence of an assistance group member who is not the subject of the confidential information, the computer screen is adjusted in such a manner that the visual screen is not exposed to that individual.

Effective: 04/14/2003

CERTIFIED ELECTRONICALLY

Certification

04/09/2003

Date

Promulgated Under: 111.15
Statutory Authority: 111.15
Rule Amplifies: 5111.01