

GENERAL PROVISIONS FOR MAINTAINING AND DISCLOSING CONFIDENTIAL
INFORMATION OF PUBLIC ASSISTANCE AND SOCIAL SERVICES RECORDS

CHAPTER 910

GENERAL PROVISIONS FOR MAINTAINING AND DISCLOSING CONFIDENTIAL
INFORMATION OF PUBLIC ASSISTANCE AND SOCIAL SERVICES RECORDS

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22 VAC 40-910-10. Definitions. The following words and terms, when used in this
regulation, will have the following meaning, unless the context clearly indicates

otherwise:

“Agency” means a local department of social services.

“Agent” means any individual authorized to act on behalf of or under the direction of the
Commissioner of the Virginia Department of Social Services or State Board of Social

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Services for the sole purpose of accessing confidential client records in the administration of public assistance or social services programs.

“Client” means any applicant for or recipient of public assistance or social services or any individual about whom the child support enforcement division maintains information.

“Client record” means any identifying or non-identifying information, including information stored in computer data banks or computer files relating to a client.

“Department” means the Virginia Department of Social Services.

“Human research” means any formal and structured evaluation involving individuals in a special project, program, or study.

“Legally responsible person” means (i) the biological or adoptive parent or other relative with whom the child primarily resides and who has legal custody of the child; (ii) the biological or adoptive parent with whom the child does not primarily reside and who has legal custody of the child; or (iii) a committee or guardian appointed by a court to represent the interest of a client.

“Provider” means any person, agency or organization providing public assistance or social services through a contract or an agreement with the Department or agency.

“Public assistance” means Temporary Assistance for Needy Families; auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; child support enforcement; food stamps; employment services; child care; refugee assistance; and general relief.

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“Research” means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to general knowledge, including research for the development of new knowledge or techniques which would be useful in the administration of public assistance or social services programs.

“Social services program” means foster care; adoption; adoption assistance; adult services; adult protective services; child protective services; domestic violence services; family preservation, or any other service program implemented in accordance with regulations promulgated by the State Board of Social Services.

22 VAC 40-910-20. General Provisions. Except as otherwise provided in these regulations or consistent with other federal and state law or regulations, no person shall disclose or use, or authorize, permit or acquiesce to the use of any information that is directly or indirectly derived from the client records of the Department, agency, provider, or the State Board of Social Services. Exceptions to this provision are provided in subsections 22 VAC 40-910-80 and 22 VAC 40-910-90.

A. Protecting Confidential Information. All client records, which could disclose the client's identity, are confidential and must be protected in accordance with federal and state laws and regulations. Such information includes, but is not limited to:

1. Name, address and any types of identification numbers assigned to the client, including but not limited to the client's Social Security number;
2. Public assistance or social service programs provided to the client;

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3. Information received for verifying income and eligibility;
4. Evaluation of the client's confidential information;
5. Social and medical data about the client, including diagnoses and past histories of disease or disabilities;
6. Information received from third parties such as an employer; and
7. Information associated with processing and rendering appeals.

B. Ownership of Client Records.

1. Client records are the property of the Department or agency. Employees and agents of the Department or agency must protect and preserve such records from dissemination except as provided herein.
2. Only authorized employees and agents may remove client records from the Department or agency's premises.
3. The Department and agency may destroy client records pursuant to records retention schedules consistent with federal and state regulations.

C. Disclosure of Client Records.

1. Consent. As part of the application process for public assistance or social services, the client or legally responsible person must be informed of the need to consent to a third-party release of information necessary for verifying his eligibility. Whenever a person or organization that is not performing one or more of the functions delineated in subsection 22 VAC 40-910-80 B or 22 VAC 40-910-90 requests client records, the person or organization must obtain written permission from the client or the legally

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responsible person for the release of the client records unless one of the conditions delineated in subsection 22 VAC 40-910-20 C 1 a exist. A client's authorization for release of his record obtained by the Department, agency or provider also satisfies this requirement.

a. Client records may be released without the client's written permission under the following conditions:

(1) A court of competent jurisdiction has ordered the production of client records and the Department, agency or provider does not have sufficient time to notify the client or legally responsible person before responding to the order.

(2) Release is not otherwise prohibited by law or regulation.

(3) For research purposes as provided in subsection 22 VAC 40-910-50.

2. Exception. The Commissioner of the Virginia Department of Social Services, the State Board of Social Services and their agents do not have to obtain consent from the client to obtain or review client records.

22 VAC 40-910-30. Notification of Release of Confidential Information. If one of the conditions in 22 VAC 40-910-20 C 1 a above is met and consent is not obtained before the release of the client records, the Department, agency or provider must provide written notification to the client or legally responsible person within five business days after disclosure.

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22 VAC 40-910-40. Consent Process. The consent for release of information must contain the following:

1. The name of the entity supplying the information and the name of the requesting party;

2. The consent must be signed and dated by the client or legally responsible person.

The client or legally responsible person may add other information which may include, but is not limited to, a statement specifying the date, event or condition upon which the consent expires.

22 VAC 40-910-50. Release of Client Records for Research Purposes.

Prior to the initiation of research involving client records by any individual or institution that entered into an agreement with and/or is funded or licensed by the Department or agency, a written plan outlining the proposed research must be submitted to the Department or agency for review and approval. The plan must be submitted to the Commissioner or his designee(s) or agency director or his designee(s) at the location where the request is made for client records. In the event client records are requested from multiple agencies or the Department and an agency or agencies, the plan must be submitted to the Department.

A. The plan must include:

1. The purpose of the proposed research;

2. A description of how client records will be used; and

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3. A confidentiality agreement signed by the individual or institution's authorized representative which includes the following:

a. Client records will be used only for the purposes for which they are being provided;

b. Client records will not be released to any persons not connected with the research;

c. Security safeguards will be in place to protect against loss, and unauthorized access, use, modification or disclosure of client records;

d. Authorized persons involved in the research are required to maintain confidentiality of all client records connected with the research;

e. Identifying information from client records must not be discussed with or released to anyone except authorized persons involved in the research;

f. Final product(s) of the research will not reveal any information that may serve to identify any person about whom information has been obtained through the Department, agency or provider without written consent of such person and the Department, agency or provider;

g. Authorized person(s) involved in the research who fail to comply with the terms of this confidentiality agreement will be immediately terminated from the research; and

h. This confidentiality agreement must survive and continue after completion of the research. The individual or institution continues to be responsible for any breach.

B. Client records will be released for research purposes if the following conditions are met:

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1. The Commissioner of the Virginia Department of Social Services or his designee(s), or agency director or his designee(s) authorizes the plan and the release of the client records; and

2. The individual or institution complied with the appropriate security forms for the release of the client records and/or has entered into a contract with the Department or agency that stipulates the Department's or agency's requirements for the confidentiality of client records.

C. The confidentiality of human research activities involving public assistance and social services programs and clients is governed by 22 VAC 40-890-10, et seq. established pursuant to 63.1-25.01 of the Code of Virginia.

22 VAC 40-910-60. Client's Right of Access to Information. Any client has the right to obtain their client record upon written or verbal request. The client must be permitted to review or obtain a copy of his client record with the following exceptions:

1. Information that the Department, agency or provider is required to keep confidential from the client pursuant to § 2.2-3704 of the Code of Virginia, or any other applicable law.

2. Information that would breach another individual's right to confidentiality. When the material requested includes confidential information about individuals, other than the client, the parts of the client record relating to other individuals will be redacted.

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22 VAC 40-910-70. Publicizing Safeguarding Requirements. The Department, agency or provider shall inform clients in writing that client records shall be confidential pursuant to federal and state law.

22 VAC 40-910-80. Confidential Information Pertaining to Public Assistance.

Confidentiality of client records of public assistance programs is assured by §§ 63.1-53, 63.1-55.4, 63.1-126, 63.1-274.6 and 63.1-343 of the Code of Virginia.

A. Information may be released only:

1. For a purpose directly connected with the administration of a public assistance program, except as herein provided or pursuant to §§ 63.1-53, 63.1-274.3, 63.1-274.6 and 63.1-343 of the Code of Virginia.

B. Purposes directly related to the administration of a public assistance program include but are not limited to:

1. Establishing eligibility;

2. Determining the amount of public assistance;

3. Providing services for public assistance clients; and

4. Conducting or assisting in an investigation or prosecution of a civil or criminal proceeding related to the administration of the public assistance program.

C. Release of client records to law enforcement officials is governed by

22 VAC 40-320-10, et seq.

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D. The following regulatory provisions provide guidance on the release of client records from the Division of Child Support Enforcement:

1. Entities to whom the Division of Child Support Enforcement can release client records

to is governed by 22 VAC 40-880-520;

2. The release of client records to and from the Internal Revenue Service is governed

by 22 VAC 40-880-530;

3. Request for client records from the general public is governed by 22 VAC 40-880-

540;

4. Requests for client records from parents is governed by 22 VAC 40-880-550; and

5. Release of health insurance information is governed by 22 VAC 40-880-560.

22 VAC 40-910-90. Confidential Information Relating to Social Services Programs.

Confidentiality of social services records, including client records, is assured by §§ 63.1-

209 and 63.1-209.1 of the Code of Virginia.

A. Releasing Confidential Social Services Information.

1. The Commissioner of the Virginia Department of Social Services, the State Board of

Social Services and their agents shall have access to all social services client records

pursuant to § 63.1-209 of the Code of Virginia.

2. Social services client records must be confidential and can only be released to

persons having a legitimate interest in accordance with federal and state law and

regulation pursuant to § 63.1-209 of the Code of Virginia. Section 63.1-209 of the Code

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of Virginia does not apply to the disclosure of adoption records, reports and information.

The disclosure of adoption records, reports and information is governed by § 63.1-219.53 of the Code of Virginia.

3. The following statutory and regulatory provisions provide guidance on the definition of legitimate interest as applied to specific social services programs:

a. Adult Protective Services client records can be released to persons having a legitimate interest pursuant to 22 VAC 40-740-50 B.

b. Foster Care client records about children in foster care or their parents can be released, upon order of the court. For instance, client records may be released to the Guardian Ad Litem and the Court Appointed Special Advocate who are appointed for a child as a result of a court order or to attorneys representing the child or the child's parents.

c. Child Protective Services Client Records and Information Disclosure:

(1) Child protective services client records can be released to persons having a legitimate interest pursuant to § 63.1-209.1 A of the Code of Virginia.

(2) Information regarding child protective services reports, complaints, investigation and related services and follow-up may be shared with the appropriate Family Advocacy Program representative of the United States Armed Forces as provide in 22 VAC 40-720-10, et seq.

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(3) The agency must release child protective services client records in the instances of mandatory disclosure as provided in 22 VAC 40-705-160. The local department may release the information without written consent.

22 VAC 40-910-100. Other Confidentiality Regulatory Provisions. This regulation does not supersede existing regulations pertaining to the confidentiality of client records and should be read in conjunction with all public assistance and social services confidentiality regulations under Title 22.

I certify that this regulation is full, true, and correctly dated.

Ray C. Goodwin, Acting Commissioner
Department of Social Services

Date:_____