

CONFIDENTIALITY STATEMENT

Employees of the West Virginia Department of Health and Human Resources and employees of an agency or facility contracted by or cooperating with the West Virginia Department of Health and Human Resources to provide services to adults and children during the course and scope of their employment may, on occasion or as a matter of routine, come in contact or work with information that must be treated as confidential. Depending on the agency in which you are employed, there are different procedures established for handling these situations. In all cases, follow the policy and procedure established by your agency for handling and/or releasing confidential information. Any inconsistencies or ambiguities governing confidentiality between an agency's policy and procedure and that of the law shall be resolved in favor of the applicable law. The following statutes are not representative of all laws pertaining to confidentiality. Indeed, other federal and state statutes relating to confidentiality exist and are to be given due consideration. However, the following statutes will serve as the primary foundation of confidentiality as it relates to the children and adults served by the West Virginia Department of Health and Human Resources.

Child Welfare

West Virginia Code § 49-7-1. Confidentiality of Records.

- (a) Except as otherwise provided in this chapter or by order of the court, all records and information concerning a child or juvenile which are maintained by the division of juvenile services, the Department of Health and Human Resources, a child agency or facility, court or law-enforcement agency shall be kept confidential and shall not be released or disclosed to anyone, including any federal or state agency.
- (a) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, records concerning a child or juvenile, except adoption records, juvenile court records and records disclosing the identity of a person making a complaint of child abuse or neglect shall be made available:
 - (1) Where otherwise authorized by this chapter;
 - (2) To:
 - (A) The child;
 - (B) A parent whose parental rights have not been terminated; or
 - (C) The attorney of the child or parent;
 - (3) With the written consent of the child or of someone authorized to act on the child's behalf; or
 - (4) Pursuant to an order of a court of record. Provided, that the court shall review such record or records for relevancy and materiality to the issues in the proceeding, and may issue an order to limit the examination and use of the records or any part thereof.
- (c) In addition to those persons or entities to whom information may be disclosed under subsection (b) of this section, information related to child abuse or neglect proceedings, except information relating to the identity of the person reporting or making a complaint of child abuse or neglect, shall be made available, upon request, to:
 - (1) Federal, state or local government entities, or any agent of such entities, including law-enforcement agencies and prosecuting attorneys, having a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect;
 - (2) The child fatality review team;
 - (3) Child abuse citizen review panels;
 - (4) Multidisciplinary investigative and treatment teams; or
 - (5) A grand jury, circuit court or family law master, upon a finding that information in the records is necessary for the determination of an issue before the grand jury, circuit court or family law master.
- (d) In the event of a child fatality or near fatality due to child abuse and neglect, information relating to such fatality or near fatality shall be made public by the Department of Health and Human Resources and to the entities described in subsection (c) of this section, all under the circumstances described in that subsection: *Provided*, that information released by the Department of Health and Human Resources pursuant to this subsection shall not include the identity of a person reporting or making a complaint of child abuse or neglect. For purposes of this subsection, "near fatality" means any medical condition of the child which is certified by the attending physician to be life-threatening.
- (e) Except in juvenile proceedings which are transferred to criminal proceedings, law-enforcement records and files concerning a child or juvenile shall be kept separate from the records and files of adults and not included with the court files. Law-enforcement records and files concerning a child or juvenile shall only be open to inspection pursuant to the provisions of sections seventeen and eighteen [§§ 49-5-17 and 49-5-18], article five of this chapter.
- (f) Any person who willfully violates the provisions of this section is guilty of a misdemeanor and, upon conviction

thereof, shall be fined not more than one thousand dollars, or confined in the county or regional jail for not more than six months, or be both fined and confined. A person convicted of violating the provisions of this section shall also be liable for damages in the amount of three hundred dollars or actual damages, whichever is greater.

(g) Notwithstanding the provisions of this section, or any other provision of this code to the contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious crime shall be made available to the public. (1977, c. 65; 1978, c. 14; 1997, c. 111; 1998, c. 190; 1999, 1st Ex. Sess., hcc. 5, 2000).

Social Services For Adults
West Virginia Code § 9-6-8. Confidentiality of Records.

Except as otherwise provided in this section, all records of the department and all protective services agencies concerning an adult under this article shall be confidential and shall not be released, except in accordance with the provisions of section eleven [9-6-11] of this article.

Unless the adult concerned is receiving adult protective services or unless there are pending proceedings with regard to such adult, the records shall be destroyed two years following their preparation. A circuit court or the Supreme Court of Appeals may subpoena such records, but shall, before permitting their use in connection with any court proceedings, review the same for relevancy and materiality to the issues in the proceeding, and may issue such order to limit the examination and use of such records or any part thereof, having due regard for the purposes of this article and the requirements of the litigation as shall be just. (1981, c. 215; 1984, c. 93.)

West Virginia Code § 9-6-11. Reporting Procedures.

A report of neglect or abuse of an incapacitated adult or of an emergency situation involving such an adult shall be made immediately by telephone to the department's [division's] local adult protective services agency and shall be followed by a written report within forty-eight hours. The department [division] shall, upon receiving any such report, take such action as may be appropriate and shall maintain a record thereof. The department [division] shall receive such telephonic reports on its twenty-four hour, seven-day-a-week, toll-free number established to receive calls reporting cases of suspected or known adult abuse or neglect.

A copy of any report of abuse, neglect or emergency situation shall be made available immediately to the appropriate law-enforcement agency and the prosecuting attorney, or in case of a death, to the appropriate medical examiner or coroner's office; Provided, That the department [division] shall omit from such report in the first instance, the name of the person making a report, when requested by such person. Reports of known or suspected institutional abuse neglect of an incapacitated adult or the existence of an emergency situation in an institution shall be made, received and investigated in the same manner as other reports provided for in this article. In the case of a report regarding an institution, the department [division] shall immediately cause an investigation of the institution to be conducted. (1984, c. 93.)

I, _____, have read this confidentiality statement and
(please print)
hereby acknowledge its contents and hereby agree to abide by same.

DATE

EMPLOYEE (Signature)