

Child and Family Services Policy Manual: Confidentiality, Case Records, and HIPAA Record Retention/Destruction

Schedule Approval State law requires that retention and disposal of records be approved by the state records committee. A retention/ destruction policy has been approved by the state records committee.

All medical records and documentation about protected health information (listed below) must be retained for a period of six years and three months:

- Authorizations to disclose PHI
- Authorized personal representatives
- Requested restrictions for the use of PHI
- Requested amendments to PHI
- Requests to access PHI
- Denials for access to PHI
- and Disclosures of PHI (not authorized by the individual or the individual's personal representative)

If the case record is scheduled for destruction due to unfounded or unsubstantiated reports of abuse or neglect, the paper case record documenting the above-listed PHI-related information will be retained for audit purposes six years and three months from the most recent date listed in the above-listed information.

Permanent Retention

Adoption Records

At the time an adoption is finalized, the entire CAPS record is transferred electronically and the paper case record is forwarded by the local office via certified mail to central office for permanent retention. The record is maintained in perpetuity.

Permanent Custody

At the time of closure, permanent custody records are forwarded by the local office by certified mail to the Division's central office for permanent retention. Such records are also maintained in perpetuity.

Temporary Legal Custody

In cases that the Department had TLC of a child and the child ages out of the system, the foster care records are forwarded by the local office by certified mail to the Division's central office for permanent retention. Such records are maintained in perpetuity.

Limited Retention

CPS Case Records

Substantiated or Indicated reports: Case records containing substantiated or indicated complaints are retained by the local office until the date the youngest child in the home turns age 23. When a case is closed, the projected destruction date is marked on the outside of the file folder. A chronological list of files and their destruction dates must be maintained by each local office.

If possible future legal action is anticipated in a case, the record should be retained until 12 years after the child turns age 18. This

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time period allows for statute of limitations for reporting abuse and neglect as well as various judicial proceedings to take place (e.g., appeals).

Unsubstantiated reports: If a case record contains a report which is unsubstantiated, the child protection specialist **must** destroy all of the records (hard copies and CAPS documentation), except for medical records, concerning the unsubstantiated report and the investigation within 30 days after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:

- 1) there had been a previous or there is a subsequent substantiated report concerning the same person (alleged perpetrator); or
- 2) an order has been issued in response to a filed child abuse or neglect petition based on the circumstances surrounding the initial allegations.

A person who is the subject of an unsubstantiated report made prior to October 1, 2003, may request that the child protection specialist destroy all of the records concerning the unsubstantiated report if a period of 3 years has elapsed and

- 1) no subsequent substantiated report has involved the individual; or
- 2) no order has been issued under this chapter based on the circumstances surrounding the initial allegations.

Unfounded reports: Unfounded reports will automatically be electronically purged by CAPS. The paper case record portion concerning the report and investigation must be destroyed within 30 days of the determination the referral is unfounded, with the exception of medical records, which will be retained for audit purposes for six years and three months. A case is unfounded when the investigating child protection specialist makes the determination that the reported abuse or neglect did not occur.

Other Records

All other records may be destroyed according to the schedule mentioned under "limited retention" above.

Licensing Files

Licensing files are retained by the issuing office for a period of three years after the date of closure, except for medical records which will be retained for six year and three months (for audit purposes). When a licensed or registered facility has been the subject of a substantiated report, the file is retained as in the case of other

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substantiated case records above.

Grants/ Contracts

Financial and other information related to federal and state grants and contracts will be kept according to federal and state regulations and contract laws. In the event of a conflict between state schedules and federal requirements, the longer retention period shall apply.

NOTE: The current year is not included in the calculating of the retention period. The retention period should be calculated as the current year plus the given retention period.

Storage

Case records approved for destruction are to be stored in locking file cabinets whenever possible.

Methods

The staff person assigned to carry out destruction of case records, licensing files or other documents shall destroy the documents either by shredding or burning. If the person does not actually conduct the shredding or burning, he or she must witness that it has been done.

Reference

Mont. Code Ann. § § 2-6-201 through 2-6-213
 Mont. Code Ann. § 2-15-1013
 Mont. Code Ann. § 41-3-102
 Mont. Code Ann. § 41-3-202
 Mont. Admin. R. 37.47.602
 DPHHS HIPAA Policy 008
 45 CFR Parts 160 and 164