

OVERVIEW - BEST BEGINNINGS CHILD CARE SCHOLARSHIPS

CHILD CARE 1-9

Confidentiality

Supersedes: Child Care 1-7 (2/1/11)

References: 37-80-103 ARM
MCA 41-3-201, 41-3-205
Montana Constitution, Art II, Sections 9 & 10

General Rule

The Department of Public Health & Human Services [DPHHS] and its contractors may share client information for purposes directly connected with the administration of the public assistance programs with other federal programs and certain entitled entities. Confidential information concerning the applicant or participant, without notice to or permission of the individual, may be provided and used for the following purposes:

- ❑ Reporting child abuse and neglect to the appropriate authority (Montana Codes Annotated [MCA] 41-3-205);
- ❑ Conducting child support activities;
- ❑ Conducting child care licensing activities;
- ❑ Establishing eligibility and administering (including audits, investigations, prosecutions, etc.) federal programs or federally assisted programs, which provide assistance (cash, in-kind, or services) directly to individuals based on need.

Requests for information about current or past participants, which do not meet the above criteria must be submitted in writing to ECSB:

Early Childhood Services Bureau
PO Box 202925
Helena, MT 59620-2925
444-2547 FAX

When there is a question about a breach of confidentiality, the Early Childhood Services Bureau will refer the request to the Office of Legal Affairs.

The Department and its contractors must maintain confidentiality with health records and other materials under the Health Insurance Portability & Accountability Act [HIPAA].

Subpoenas

When a subpoena is served, the CCR&R agency Director must send or fax the subpoena to the Early Childhood Services Bureau. Child Care Resource and Referral agencies should obtain legal advice from their own attorney.

Emergency Situations

When information is needed to provide emergency medical care, the information must be released. As soon as possible thereafter, the applicant or participant must be notified of the release of information.

Reporting Child Abuse & Neglect, a Statutory Requirement

Montana Codes Annotated [MCA] 41-3-201 [portions relevant to childcare services]: When the professionals and officials listed in subsection 1 [below] know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the Department of Public Health and Human Services or its local affiliate [see "Where to Report . . ." below].

- 1) Professional and officials required to report are:
 - (a) school teachers, other school officials and employees who work with children during regular school hours;
 - (b) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child care facility;
 - (c) an employee or owner of an entity that contracts with the department to provide direct services to children. [i.e. Legally Certified Provider]
- 2) Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.
- 3) Except as provided in subsection (1)(b) or (1)(c), a person listed in subsection (1) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.
- 4) The reports referred to under this section must contain:
 - (a) the names and addresses of the child and the child's parents or other persons responsible for the child's care;
 - (b) to the extent known, the child's age and the nature and extent of the child's injuries, including any evidence of previous injuries;
 - (c) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter.

MCA 41-3-203: Immunity from liability. (1) Anyone investigating or reporting any incident of child abuse or neglect under 41-3-201 or 41-3-202, participating in resulting in judicial proceedings, or furnishing hospital or medical records as required by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed unless the person was grossly negligent or acted in bad faith or with malicious purpose or provided information knowing the information to be false.

Where to Report Child Abuse & Neglect

Child abuse and neglect may be reported in Montana by dialing the following toll-free telephone number:

1-866-820-KIDS (5437)

If the child is in immediate danger,
call 911 or the local law enforcement agency.

Contractors

Violation of Department policy confidentiality by a contractor may result in cancellation of that contract with the Department.

Through the contracting process, contractors agree to protect the confidentiality of any material and information concerning a participant provided under the auspices of the contract and are subject to the same confidentiality requirements as Department employees.

All materials and information, whether verbal, written, or otherwise provided to the contractor by the State or acquired by the contractor on behalf of the State will be regarded as confidential information.

Volunteers

Volunteers or others who are not employed by DPHHS or its contractors may not determine eligibility. However, they may assist in related activities such as:

- Obtaining necessary information; and
- Helping applicants complete the application form.

Volunteers are restricted from disclosing confidential information.

Child Care Resource and Referral [CCR&R] Practices

Child Care Resource and Referral [CCR&R] agencies have the responsibility of maintaining confidentiality of family and provider information. Examples of maintaining confidentiality in the Child Care Resource and Referral setting include, but are not limited to, the following:

- The name or any identifying information is not available in a public location, of a family receiving service.
- The CCR&R maintains confidentiality when a non-custodial parent requests the location of their children, without approval from authorities.
- An applicant's or a participant's personal information remains confidential when a child care provider inquires about eligibility. The CCR&R maintains confidentiality when a provider seeks the location of a previous customer.

Release to Child Care Licensors & Child and Family Services Investigators

Child Care Resource and Referral [CCR&R] agency staff and child care providers shall release information relevant to authorities participating in child care licensing or Child and Family Services Division [CFSD] investigations.

Release to Law Enforcement

Only the participant's address can be released to a federal, state or local law enforcement officer who presents a written request for information which includes the participant's name and specifies that the individual:

- is fleeing to avoid prosecution, custody or confinement for a felony, or;
- is violating a condition of parole or probation; or
- has information necessary for the officer to conduct official duties.

Release to Participant

The applicant/participant may review all information, which was considered when making the eligibility determination in the case file. Privileged information, such as the name of individuals who have disclosed information about the household without the household's knowledge or the nature or status of pending criminal prosecution, may be withheld. The agency must also make available, without charge, the specific materials necessary for a household or its representative to determine whether a fair hearing should be requested or to prepare for a hearing.

Release to Others

Case file information may be released in situations other than those already described only if the head of the household, the spouse or other person authorized by the household provides a written authorization to release information which includes:

- The date the authorization expires, and;
- The name of the person or agency to whom the information will be released,
- Information which can be released:
 - itemizing specific items;
 - items dated within a certain time frame; or
 - general release.
- A dated signature of the authorizing individual.

Authorizations to Release Information issued by providers or other entities will not be honored unless prior approval has been granted by ECSB.

Authorization to Release Information

The *Authorization to Release Information* form is used to assist the applicant/participant in obtaining information necessary to determine eligibility. It explains the client's rights to confidentiality and gives the participant/applicant the option of authorizing the release of information or declining to authorize the release of information.

The authorization expires one year from the date of signature, so must be completed at application and yearly thereafter. The participant/applicant always has the right to rescind the authorization in writing. Because one cannot waive another individual's right to confidentiality, each adult household member should be given the opportunity to review and sign the *Authorization to Release Information* form. The Authorization to Release Information may not be used to gain access to HIPAA protected information.

Refusal to Authorize Release of Information

Signing the *Authorization to Release Information* form is not a condition of eligibility. However, if the participant/applicant does not wish to sign the form it should be case noted that they were

given the opportunity, refused, and intend to provide eligibility related information without assistance.

Although a participant may not authorize a release of information, the Child Care Resource and Referral [CCR&R] agency may contact the caseworker, who determines eligibility, when serving the family's child care needs in support of Temporary Assistance for Needy Families [TANF], Child Protective Services [CPS], or Full Day/Full Year Head Start programs. The information shall be limited to a need-to-know basis regarding the child care schedule required for the family. Refer back to the general rule for this, as outlined in Policy Section 1-7.

Authorization to Release Information

The *Authorization to Release Information* form is used for incident specific releases of information on a case-by-case basis. The participant/applicant should be very specific about what information they are authorizing for release. Not every participant/applicant would need to sign the form. The participant/applicant sets the amount of time for which the authorization is in effect and can rescind the authorization at any time in writing.

Child Care Providers

Child Care Providers shall keep all information pertaining to the family confidential, except for the following circumstances:

- ❑ All child care providers are mandatory reporters for suspected child abuse or neglect. These concerns shall be reported to the Department's Child Protective Services Intake Unit.
- ❑ Child care providers shall share information with Department child care licensing personnel.
- ❑ The provider shall share attendance information with the Department or the Child Care Resource and Referral [CCR&R] with regard to the child care scholarship program.
- ❑ A provider may provide documentation indicating service to subsidized families to qualify for related ECSB programs:
 - Child and Adult Care Food Program
 - Child Care Licensing/Registration Programs