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|  | **DIVISION OF CHILD AND FAMILY SERVICES**  **Children’s Mental Health** |
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| SUPERSEDES: | ATC Confidentiality Policy, March 2007  2.05 DWTC Release of Confidential Information Policy, January 2005  6.09 Medical Records Access, September 2010 |
| APPROVED BY:  **DATE:** | The Commission on Behavioral Health  January 16, 2016 |
| **REFERENCES:** | **FEDERAL STATUTES AND REGULATIONS**  42 U.S.C. § 290-dd-2  42 U.S.C. 10805  Title XIII, Subtitle D of the American Recovery and Reinvestment Act of  2009 (HITECH Act)  42 C.F.R. Part 2  45 C.F.R. Part 160, Subparts A and B  45 C.F.R. Part 164, Subparts A and E  **NEVADA REVISED STATUTES**  NRS 433A.360  NRS 433.504  **RELATED POLICY AND RESEACH DOCUMENTS**  CRR-2 Client’s Rights and Responsibilities Policy, March 2014  CRR-3 Consent to Treatment Policy, January 2015  SP-7 Intake Policy, January 2015  2.30 Reporting Suspected Abuse and Neglect of Clients, April 2011  SP-4 Documentation Policy, January 2015  10.40 Child and Family Team Policy, October 2007  DCFS Health Insurance Portability and Privacy Act (HIPAA) Manual  **MEDICAID SERVICES MANUAL REGULATIONS**  MSM 100  MSM 400  MSM 2500  MSM 3600  **JOINT COMMISSION ACCREDITATION STANDARDS**  Rights and Responsibilities of the Individual (RI)  Care, Treatment, and Services (CTS) |
| **ATTACHMENTS:** | **Attachment A:** Authorization for Release of Confidential Information  **Attachment B:** List of Persons Accessing Confidential Information  **Attachment C:** Limits of Confidentiality Acknowledgement for Unlicensed DCFS Staff  **Attachment D:** DHHS/DCFS Workforce Confidentiality Agreement |

1. **POLICY**

It is the policy of the Division of Child and Family Services that all information and records obtained or received in the course of providing behavioral health services to a client or requesting payment reimbursement for these services, whether in written format, electronic format or oral format, are confidential and shall only be disclosed or released according to the provisions of this policy and applicable federal and state laws.

1. **PURPOSE**

Confidentiality is a fundamental practice and ethical standard to which adherence is required in order to ensure the information clients provide or that which is obtained is respected in furtherance of establishing a therapeutic, helping relationship.

The purpose of this policy and procedure is to facilitate the adherence to ethical codes of conduct and standards regarding confidentiality of client information and to protect the privacy of clients served in DCFS children’s mental health programs in order to:

1. Support and ensure the development and maintenance of the therapeutic relationship and milieu;
2. Prevent the unauthorized disclosure of confidential information; and,
3. To set forth requirements for all DCFS staff that collect, store and disseminate information regarding clients who are served by DCFS facilities.

This policy is to be used in conjunction with the DCFS HIPAA Privacy Manual.

1. **PRACTICE GUIDELINES AND PROCEDURES**
2. Introduction

It is an ethical responsibility and a legal and professional duty to safeguard client information from unauthorized disclosures obtained and given in the context of the therapeutic/professional working relationship.

Clients are entitled to receive mental health services from the Division with the expectation that information about them will be treated with the utmost respect for their privacy and confidentiality by all DCFS staff providing direct and support services. All clients, regardless of age or circumstance, have the right to expect that communications will be kept within the bound of the therapeutic/professional relationship.

1. Confidential Information

Client information can be obtained in written format, in electronic format, and orally. DCFS staff shall keep all information obtained or provided in the course of providing services to clients confidential and shall not disclose such information unless permitted or required by federal or state law or as set out in this policy.

1. Federal and state law regulates two major categories of confidential information. They are:
   * 1. Information obtained when providing behavioral health services not related to alcohol or drug abuse referral, diagnosis or treatment; and,
     2. Information obtained in the referral, diagnosis, and treatment of alcohol or drug abuse.
2. Disclosure of Confidential Information Obtained when providing behavioral health services not related to alcohol or drug abuse referral, diagnosis or treatment

Although federal regulations allows DCFS to release or use certain information without an Authorization for Release of Confidential Information (Attachment A), the Division has adopted more stringent rules regarding the disclosure of confidential information.

* + - * 1. The following disclosures require a fully executed Authorization for Release of Confidential Information (Attachment A):

1. Treatment of the client and family (such as coordination with other service providers); and,
2. For certain law enforcement purposes (such as to identify or locate a suspect or missing person, such as when a client may go AWOL).
   * + - 1. The following disclosures do not require an Authorization for Release of Confidential Information (Attachment A):
3. Payment or requests for reimbursement (such as to insurance companies);
4. Certain health care operations (such disclosure to agencies charged with evaluating DCFS such as the Centers for Medicaid and Medicare Services, DHCFP, DHHS, etc.);
5. When required by law (such as a statute or court-ordered warrants such as child protective services investigations, etc.);
6. When appropriate or legally mandated to notify authorities about victims of abuse, neglect, or domestic violence;
   * 1. When necessary to prevent or lessen serious and imminent threat to a person or the public; and,
7. Medical emergencies.

All other release of information requires an executed Authorization for Release of Confidential Information (Attachment A).

1. Disclosure of Confidential Information obtained in the referral, diagnosis, and treatment of alcohol or drug abuse.

Information regarding treatment for alcohol or drug abuse is afforded special confidentiality protections by virtue of federal statute and regulation. This includes any information concerning a person’s diagnosis or treatment from a federally assisted alcohol or drug abuse program or referral to a federally assisted alcohol or drug abuse program.

1. General Procedures for All Disclosures of Confidential Information
2. Unless otherwise excepted by state or federal law, all information obtained about a client related to the provision or payment of children’s mental health services to the client is confidential whether the information is in oral, written or electronic format.
3. Release of Confidential Information to the Client/Legally Responsible Person

A client or, in the case of minor children, the legally responsible person is entitled to the entirety of the client record pursuant to NRS 433.504 and must be permitted to inspect his/her record upon request unless a DCFS Medical Director or his/her designee who is a psychiatrist has made a specific entry to the contrary in a client’s record. Federal regulations prohibit a denial of access to the record by the client/legally responsible person unless there is documented justification that in sharing the information the client may do harm to self or others; a DCFS staff member’s concern that the information may upset the client or legally responsible person shall not be an allowable justification for withholding access to the record.

1. List of Persons Accessing Confidential Information

DCFS staff shall ensure that a list is kept (Attachment B: List of Persons Accessing Confidential Information) of every person or organization that inspects a currently or previously served client’s confidential information other than the client’s clinical team/CFT. The list is to include the uses to be made of that information and the DCFS staff authorizing access. The access list shall be placed in the client’s record and shall be made available to the client and/or the legally responsible person or other designated representative upon their request.

Examples of situations in which a list of a person or organization inspecting a client record may include child protective services investigators, Legislative Counsel Bureau auditors, State of Nevada internal auditors and/or executive branch auditors, the DCFS Administrator, members or the DCFS Planning and Evaluation Unit, any State of Nevada Department of Health and Human Services “sister” agency, contractors, etc.

1. Disclosure of Confidential Information to Clinical or Child and Family Teams (CFT)

DCFS requires the legally responsible person to execute an Authorization for Release of Confidential Information (Attachment A) for each non-DCFS member of the client’s clinical team or CFT.

DWTC is required to obtain an Authorization for Release of Confidential Information (Attachment A) at admission for each client admitted to DWTC residential programs which authorizes DWTC to release the complete client record to all other DCFS programs when the client is discharged from DWTC in order to ensure continuity of care when clients are discharged and transitioned to DCFS community based programs for after care purposes.

1. Disclosure of Confidential Information to Persons in Court Proceedings

Disclosure of confidential information to persons involved in court proceedings including attorneys, probation or parole officers, guardian’s ad litem and court appointed special advocates (CASA) may or may not require an authorization depending upon the type of information to be disclosed and whether the court has entered orders permitting or requiring the disclosure. These circumstances are to be reviewed with the DCFS staff supervisor and manager before any information is released or disclosed under these circumstances. Under these circumstances, the supervisor and manager may consult with the CMH Deputy Administrator. Approval or denial to release the information is determined only by the supervisor or manager or Deputy Administrator under these circumstances and such decisions are to be fully documented in the client record.

1. Disclosure of confidential information to a governmental agency or law enforcement to secure return of a client

An Authorization for Release of Confidential Information (Attachment A) shall be executed during the intake process in the event the client goes AWOL from a DCFS Residential Program following admission (Please also refer to SP-7 DCFS Intake Policy, January 2015).

1. Disclosure of confidential information to a governmental agency or law enforcement to prevent a risk of harm

DCFS staff is permitted to release limited disclosure of confidential information to governmental agencies to prevent or lessen a serious and imminent threat to the health or safety of a client or the public (45 C.F.R. §164.512(j). An Authorization for Release of Confidential Information (Attachment A) shall be executed during the intake process in the event there is a risk of harm which must be reported to law enforcement (Please also refer to SP-7 DCFS Intake Policy, January 2015).

1. Court-ordered disclosures of Confidential Information

A state or federal court may issue an order that authorizes DCFS to make a disclosure of confidential or protected health information that would otherwise be prohibited. A subpoena, search warrant or arrest warrant is not sufficient standing alone, to require or permit DCFS to disclose confidential or protected health information. These circumstances are to be reviewed with the DCFS staff supervisor, manager, Deputy Administrator and/or Deputy Attorney General, as applicable, before any information is released or disclosed.

1. Response to telephone inquiries about clients

Information concerning a client’s presence or status in a DCFS facility or program is confidential and shall not be released over the phone unless the caller is a member of the client’s clinical team/CFT and for whom DCFS has an executed Authorization for Release of Confidential Information (Attachment A).

Each DCFS program shall have procedures in place to confirm the identity of all telephone callers who inquire about a client and shall not release any information in the event the caller does not have the right to the information by virtue of an executed Authorization for Release of Confidential Information (Attachment A) and/or the identity of the caller cannot be confirmed.

1. Limits of Confidentiality and Informed Consent
2. Sharing Confidential Information with the Legally Responsible Person

There is no statute in the State of Nevada which allows a minor child or DCFS staff to prohibit the legally responsible person access to the client record or any other information which a client may share, except disclosures of suspected child maltreatment. Therefore, DCFS staff is required to discuss the limits of confidentiality with the client and the legally responsible person, including the client’s desire that information be shared with or be withheld from the legally responsible person; such a discussion should ideally occur in the context of a therapeutic/helping relationship and should be a discussion which is revisited as the therapeutic/helping relationship grows.

1. Although it is an ethical obligation to maintain confidentiality of the client relationship, this obligation is not absolute. There are certain situations in which confidential information can be or is required to be disclosed. The general requirement that DCFS staff keep information confidential does not apply when disclosure is required in order to prevent a clear or imminent danger to the client or others or when there are statutory mandates that confidential information must disclosed or reported, as in the case of suspected child maltreatment and mandated reporting statutes (Please refer to 2.30 Reporting Suspected Abuse and Neglect of Clients, April 2011). Whenever a DCFS staff member has determined a disclosure is warranted for these reasons, these circumstances shall be immediately reviewed with a DCFS supervisor and manager before any information is released or disclosed.

The limits of confidentiality are shared with the legally responsible person and the client during the intake process, admission and/or initial appointment with the mental health professional. Although the information clients share is confidential, we must ensure we disclose to clients that there are three issues that limit our ability to maintain their confidentiality. These are:

1. If DCFS staff discovers or suspects that someone has been hurting or abusing the client, we are required to tell law enforcement and/or child protective services.
2. If the client discloses s/he has made a plan to hurt themselves, DCFS staff is required to let the legally responsible person know.
3. If the client discloses s/he has made a plan to hurt someone else, DCFS staff is required to warn that person.

Most of what clients discuss with DCFS staff is private however DCFS staff is required to disclose to clients that if they want to talk about any of the three issues noted above in this section, DCFS staff is required by law to share this information with others. We must also disclose to clients that we are required to disclose information to the legally responsible person whenever the legally responsible person requests the information.

1. Unlicensed DCFS Staff

All clients and their legally responsible person shall be advised that confidentiality cannot be guaranteed by any DCFS staff who is not a licensed clinical professional in the event that DCFS staff member is subpoenaed to testify with regard to information disclosed during the course of treatment. This limitation to confidentiality is shared with all clients and the legally responsible person at intake after which the legally responsible person shall sign the Limits of Confidentiality Acknowledgement for Unlicensed DCFS Staff (Attachment C).

1. Confidentiality, privacy and data security
   * 1. All DCFS staff is required to sign a DHHS/DCFS Workforce Confidentiality Agreement (Attachment D). A copy of this agreement is maintained by the supervisor, a copy is offered to the DCFS staff member, and the original is maintained by DCFS Personnel for the employee’s file. The agreement shall be reviewed and updated as needed and whenever the DCFS Confidentiality Policy is revised.
     2. An Authorization for Release of Confidential Information (Attachment A) must be obtained from the legally responsible person before any DCFS client records can be released to any person or entity not directly concerned with the client’s care or responsible for making payments for the cost of such care.

All DCFS staff shall use and disclose information solely in accordance with this policy, the DCFS HIPAA Privacy and Security Rules and will agree to comply with any Division policy, procedures and training requirements.

* + 1. All DCFS staff shall take reasonable care to properly secure all information on computers and will take steps to ensure unauthorized individuals cannot view or access this information. While away from the workstation, DCFS staff will either log off or lock their computers. Computers must have password-protected screensavers to lock computers after 20 minutes of idle time to prevent access by unauthorized users.
    2. All DCFS staff shall ensure client records are not left out on desks when clients are present or when others who do not have a need to know are present.
    3. Privacy and security safeguards outlined in the DCFS HIPAA Privacy Manual will be used to limit access to Protected Health Information (PHI) to authorized users only.

1. **DEFINITIONS**
2. Confidentiality: This refers to the practice standards used by DCFS staff to ensure a client’s privacy about information and disclosures they share in the course of treatment, including therapy, and out of home care.
3. Workforce members (AKA DCFS staff): Pursuant to the Department of Health and Human Services’ HIPAA Confidentiality Agreement (Attachment D) workforce members include state employees, contractors, temporary workers, students, interns, externs, voluntary workers or other workforce members as defined by the Division.