

**Child and Family Services Policy Manual: Confidentiality, HIPAA, and Case Records
Consequence of Violation of Department Policy on Confidentiality
and the Public Health Service Act**

Introduction	<p>Safeguarding confidential information is essential to preserving the integrity and privacy of clients. This includes alcohol and drug abuse patient information. DPHHS staff must maintain the confidentiality of case record information gathered by providing direct services, by contractors for providing contracted services, or by foster care providers for providing foster care services.</p>
Department Staff And Contractor Responsibilities Regarding Maintaining Confidentiality	<p>Each employee is responsible for his or her own actions and for knowing and understanding the agency's policies and laws concerning confidentiality. All Department employees shall comply with the confidentiality provisions of this policy. Each employee will receive orientation on Department confidentiality policy within 30 days of employment and annually thereafter for the duration of employment.</p> <p>All Department employees shall comply with Department policies regarding confidentiality. Any use or disclosure in violation of these policies will be subject to disciplinary action up to and including termination of employment.</p>
Supervisors	<p>The supervisor is responsible for assuring that each employee receives:</p> <ul style="list-style-type: none"> • Orientation to Department policy within 30 days. • Supervisors will document the date of such training on ACTD. <p>The supervisor or designee is responsible for ensuring that members of child protective teams and individual habilitation teams are informed of the Department's confidentiality as well as record disclosure laws.</p>
Licensure Staff	<p>Licensure staff are responsible for assuring that facilities and providers are informed of confidentiality at the time of licensure.</p>
Grant Administrators/ CFSD Contract Liaisons	<p>CFSD Grant Administrators and Contract Liaisons are responsible for assuring that contractors are advised of and agree to comply with Department confidentiality prior to or at the time of execution of the contract.</p> <p>Violation of Department policy on confidentiality by a contractor may result in cancellation of the contract.</p>

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Duty to Report

Each DPHHS Employee or Contractor must immediately report any disclosure of confidential information by self or by others in violation of federal and/or state law and rule requirements to the applicable supervisor and Regional Administrator, Grants Administrator, Contract Liaison, or Bureau Chief.

Complaints and Violations

Every complaint report regarding an alleged violation of the Department's confidentiality policies shall be promptly investigated by the immediate supervisor, Grant Administrator, or Contract Liaison. If a violation has occurred, appropriate disciplinary action shall be taken.

Violations by Department employees will result in disciplinary or corrective action, suspension or discharge of the employee in addition to any criminal and/or civil penalties that may be imposed by statute.

Violations by contractors may result in the termination of the contract.

Violations by foster care providers may result in suspension or revocation of a license or registration certificate issued by the Department.

Criminal penalties may be imposed by statute and an individual may be held personally liable in a civil proceeding resulting from the confidentiality breach.

Presumption of Harm Resulting from Violations

All violations of confidentiality, both unintentional and intentional, are presumed to be harmful to the individual whose confidentiality has been violated, and the Department shall consider all violations serious in nature.

When a violation or alleged violation of confidentiality occurs, the immediate supervisor shall notify the Regional Administrator of the breach or alleged breach. The Regional Administrator and immediate supervisor, if appropriate, shall conduct an investigation regarding the breach or alleged breach. The Regional Administrator shall also inform the Field Services Administrator and the Division Administrator of the breach or alleged breach.

The Regional Administrator shall consult with Human Resources in determining the appropriate disciplinary action based on the facts of the violation, if a violation is determined to have taken place. The

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Regional Administrator shall inform the Field Services Administrator and the Division Administrator of the disciplinary action recommended by Human Resources. The Regional Administrator shall follow the recommendations of Human Resources, after consultation with the Field Services Administrator and the Division Administrator, and shall work with the immediate supervisor, when appropriate, to implement the recommended disciplinary action.

Other Penalties

Under the Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2, Subpart A), of the Public Health Service Act, any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined not more than \$500 in the case of a first offense, and not more than \$5,000 in the case of each subsequent offense.

References

Mont. Code Ann. § 41-3-205
42 CFR Part 2

Rev. 10/03
Rev. 10/06
Rev. 10/07
Rev. 10/10