

## **FACTS 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 § 49-5-101. Confidentiality of records; non-release of records; exceptions; penalties.

- (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.
  
- (b) 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, lawenforcement 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 section one hundred three [§ 49-5-103] of this article.
- (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.

(h)(1) Notwithstanding the provisions of this section or any other provision of this code to the contrary, the Division of Juvenile Services may provide access to and the confidential use of a treatment plan, court records or other records of a juvenile to an agency in another state which:

(A) Performs the same functions in that state that are performed by the Division of Juvenile Services in this state;

(B) Has a reciprocal agreement with this state; and

(C) Has legal custody of the juvenile.

(2) A record which is shared under this subsection may only provide information which is relevant to the supervision, care, custody and treatment of the juvenile.

(3) The Division of Juvenile Services is authorized to enter into reciprocal agreements with other states and to propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement this subsection.

(4) Other than the authorization explicitly given in this subsection, this subsection may not be construed to enlarge or restrict access to juvenile records as provided elsewhere in this code.

(i) The records subject to disclosure pursuant to subsection (b) of this section shall not include a recorded/videotaped interview, as defined in subdivision (6), section two, article six-b, chapter sixty-two of this code, the disclosure of which is exclusively subject to the provisions of section six of said article.

## **SOCIAL SERVICES FOR ADULTS**

### West Virginia Code § 9-6-8. Confidentiality of Records.

(a) Except as otherwise provided in this section, all records of the department, state and regional long-term care ombudsmen, nursing home or facility administrators, the office of health facility licensure and certification and all protective services agencies concerning an adult or facility resident under this article are confidential and may not be released, except in accordance with the provisions of section eleven of this article.

(b) Unless the adult concerned is receiving adult protective services or unless there are pending proceedings with regard to the adult, the records maintained by the adult protective services agency shall be destroyed thirty years following their preparation.

(c) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, all records concerning reports of abuse, neglect or exploitation of  
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vulnerable adults, including all records generated as a result of such reports, may be made available to:

- (1) Employees or agents of the department who need access to the records for official business.
- (2) Any law-enforcement agency investigating a report of known or suspected abuse, neglect or exploitation of a vulnerable adult.
- (3) The prosecuting attorney of the judicial circuit in which the vulnerable adult resides or in which the alleged abuse, neglect or exploitation occurred.
- (4) A circuit court or the Supreme Court of Appeals subpoenaing the records. The court shall, before permitting use of the records in connection with any court proceeding, review the records for relevancy and materiality to the issues in the proceeding. The court may issue an order to limit the examination and use of the records or any part of the record.
- (5) A grand jury, by subpoena, upon its determination that access to the records is necessary in the conduct of its official business.
- (6) The recognized protection and advocacy agency for the disabled of the State of West Virginia.
- (7) The victim.
- (8) The victim's legal representative, unless he or she is the subject of an investigation under this article.

(d) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, summaries concerning substantiated investigative reports of abuse, neglect or exploitation of adults may be made available to:

- (1) Any person who the department has determined to have abused, neglected or exploited the victim.
- (2) Any appropriate official of the state or regional long- term care ombudsman investigating a report of known or suspected abuse, neglect or exploitation of a vulnerable adult.
- (3) Any person engaged in bona fide research or auditing, as defined by the department. However, information identifying the subjects of the report may not be made available to the researcher.
- (4) Employees or agents of an agency of another state that has jurisdiction to investigate known or suspected abuse, neglect or exploitation of vulnerable adults.
- (5) A professional person when the information is necessary for the diagnosis and treatment of, and service delivery to, a vulnerable adult.
- (6) A department administrative hearing officer when the hearing officer determines the information is necessary for the determination of an issue before the officer.

(e) The identity of any person reporting abuse, neglect or exploitation of a vulnerable adult may not be released, without that person's written consent, to any person other than employees of the department responsible for protective services or the appropriate prosecuting attorney or lawenforcement agency. This subsection grants protection only for the person who reported the abuse, neglect or exploitation and protects only the fact that the person is the reporter. This subsection does not prohibit the subpoena of a person reporting the abuse, neglect or exploitation when deemed necessary by the prosecuting attorney or the department to protect a vulnerable adult who is the subject of a report, if the fact that the person made the report is not disclosed.

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

(a) A report of neglect or abuse of an incapacitated adult or facility resident or of an emergency situation involving such an adult shall be made immediately by telephone to the department's local adult protective services agency and shall be followed by a written report by the complainant or the receiving agency within forty-eight hours. The department shall, upon receiving any such report, take such action as may be appropriate and shall maintain a record thereof. The department 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.

(b) A copy of any report of abuse, neglect or emergency situation shall be immediately filed with the following agencies:

- (1) The department of health and human resources;
- (2) The appropriate law-enforcement agency and the prosecuting attorney, if necessary; or
- (3) In case of a death, to the appropriate medical examiner or coroner's office.

(c) If the person who is alleged to be abused or neglected is a resident of a nursing home or other residential facility, a copy of the report shall also be filed with the state or regional ombudsman and the administrator of the nursing home or facility.

(d) The department shall omit from such report in the first instance, the name of the person making a report, when requested by such person.

(e) Reports of known or suspected institutional abuse or neglect of an incapacitated adult or facility resident or the existence of an emergency situation in an institution, nursing home or other residential facility 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, nursing home or residential facility, the department shall immediately cause an investigation to be conducted.

(f) Upon receipt of a written complaint, the department shall coordinate an investigation pursuant to section three of this article and applicable state or federal laws, rules or regulations.

I, \_\_\_\_\_, have read this confidentiality statement and  
(please print)

hereby acknowledge its contents and hereby agree to abide by same.

\_\_\_\_\_  
EMPLOYEE SIGNATURE

\_\_\_\_\_  
DATE