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	CHILD AND FAMILY SERVICES AGENCY **Approved by:** **Uma Ahluawalia** Agency Director **Date:** **May 25, 2006**	**REVISION HISTORY:** May 16, 2006
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AUTHORITY	The Director of the Child and Family Services Agency (CFSA) adopts this policy to be consistent with the Agency's mission and applicable federal and District of Columbia laws and regulations, including 45 CFR Parts 160 and 164 (HIPAA regulations) and provisions of Titles 4 and 7 of the DC Official Code.
APPLICABILITY	All agency employees and personnel of CFSA contract agencies.
RATIONALE	Information (in any form) in the possession of CFSA, its staff and its contract agencies that concerns clients served by CFSA is confidential. This is both required by law and good social work practice. The information may not be used or disclosed except as consistent with law and this policy. This policy is general in nature and summarizes legislation related to the confidentiality of information in CFSA's possession. It does not address legislation related to information that CFSA may wish to access. That topic shall be addressed in a future policy. For more detailed policy related to the use or disclosure of information in a specific circumstance, see the policy related to that circumstance.
POLICY	It is the policy of the Child and Family Services Agency (CFSA) to ensure that all client records and information, and certain information regarding applicants for foster home licensure, be kept confidential and protected from public or unauthorized disclosure. Client information collected, created and/or maintained by, or on behalf of, CFSA shall only be released in accordance with the federal and District privacy and confidentiality laws and regulations.
CONTENTS	**A.** Confidential Information in General **B.** Use and Disclosure of Confidential Information **C.** Mental Health Information **D.** Penalties for Unauthorized Use or Disclosure of Information *Note: Within each procedure there are citations to the relevant sections of District and federal statutes that govern the topic addressed. The citations appear at the end of each discussion.*

ATTACHMENTS	**A.** Authorization to Disclose Information **B.** Authorization to Disclose Medical or Dental Information **C.** Authorization to Disclose Mental Health or Substance Abuse Information
PROCEDURES	**Procedure A: Confidential Information in General** District and federal law establishes the confidentiality of the information generated or maintained by the Child and Family Services Agency. Because of confidentiality, this information may not be used or disclosed except as set out in District or federal law or this policy. The following District and federal laws address the confidentiality of CFSA information: 1. ***Child abuse and neglect information*** Information that identifies individual children reported as or found to be abused or neglected or which identifies other members of their families or other persons or individuals [DC Official Code §4-1303.06(a)] 2. ***Information maintained in the Child Protection Register*** Information concerning substantiated and inconclusive reports of child abuse or neglect a. The recipient of the report, the date and time of the receipt of the report b. The name, age, sex and address of the child who is the subject of the report, each of the child's siblings and each of the child's parents or other persons responsible for the child's care c. The nature and extent of the abuse or neglect of the child and any previous abuse or neglect, if known d. All other information provided by the source that may be helpful in establishing the cause of the abuse or neglect and the identity of the person responsible for the abuse or neglect e. The identity and occupation of the source, how to contact the source and a statement of the actions taken by the source concerning the child f. Demographic information concerning the report, including the census track and ward in which the child lives g. The agencies to which the report was referred, and the date and time of the referral h. The agencies making the social investigation, the summary of its results, the dates and times it began and ended, the services offered and when the services were offered i. The agencies to which referrals were made, the services requested, and the dates the case was opened and closed

j. The child's placements and the dates of each placement

k. Each court action concerning the child and the dates of the action

l. The date the case was closed (DC Official Code §4-1302.01)

3. ***Records of child-placing agencies***
CFSA is a child-placing agency. As such, all records regarding children in CFSA's care and all facts learned about those children, and their parents or relatives, are confidential [DC Official Code §4-1405(b)]

4. ***Criminal records check information***
Information obtained pursuant to a criminal records check is confidential [DC Official Code §4-1305.08(a)]

5. ***Mental Health Information***
CFSA often receives information concerning a child or family member's mental health. In general, a mental health professional may not disclose or permit the disclosure of mental health information (District of Columbia Mental Health Information Act of 1978, DC Official Code §7-1201.01 et seq.)

Note: see below, for further discussion of mental health information and the District of Columbia Mental Health Information Act of 1978.

6. ***Individually identifiable health information***
Under HIPAA, the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936) and 45 CFR Parts 160 and 164, health information concerning a CFSA client is confidential, and may only be used or disclosed as set forth in HIPAA, another law, or pursuant to the client's authorization.

See below, for further discussion of health information and HIPAA.

Procedure B: Use and Disclosure of Confidential Information

1. ***Child abuse and neglect information***
Information which identifies individual children reported as or found to be abused or neglected or which identifies other members of their families or other persons or individuals may be used or disclosed for the following purposes:

a. The identification of abuse or neglect

b. The identification of service needs or resources

c. To secure or provide treatment or direct services to the child or other identified individual

d. For an Investigation or review of child fatalities by the District's Child Fatality Review Committee [DC Official Code §4-1303.06(a)]

	2. Unless the person or agency to which information is released pursuant to DC Official Code § 4-1303.06(a), as detailed above, is covered by comparable confidentiality requirements, the person or agency must sign a statement agreeing not to divulge the information except for the purpose for which it was disclosed [DC Official Code §4-1303.06(b)]. 3. In addition, information concerning a child fatality or near fatality shall or may be disclosed as follows: a. Except as provided in 4 below, CFSA must disclose the findings and information related to a child fatality or near fatality upon a written request by any person. b. Except as provided in 4 below, CFSA may disclose the findings and information related to a child fatality or near fatality on its own initiative [DC Official Code §4-1303.32(a)]. 4. Information concerning a child fatality or near fatality may not be disclosed if disclosure would likely do any of the following actions: a. Endanger the life, physical safety, or physical or emotional well-being of the child who is the subject of the findings and information or a child who is a sibling of such child or has shared the same household as such child. b. Endanger the life or physical safety of any person. c. Interfere with an ongoing law enforcement investigation or proceeding pertaining to the child fatality or near fatality. d. Deprive a person of a right to a fair trial or an impartial adjudication. e. Disclose the identity of any person who reported suspected abuse, neglect, or maltreatment to the Metropolitan Police Department or the CFSA, or the identity of any confidential law enforcement source in a criminal proceeding pertaining to the child fatality or near fatality. f. Disclose the identity of a birth parent of a child, if the child has been adopted and there has been no contact between the child and the birth parent immediately prior to the fatality or near fatality. g. Disclose personal or private information [DC Official Code §4-1303.32(a)(2)]. 5. Any reasonably segregable portion of a public record must be provided to a person requesting the record.

6. ***Information maintained in the Child Protection Register***
Information in the Child Protection Register (which is certain information concerning substantiated and inconclusive reports of child abuse or neglect) may or shall be disclosed as follows:

a. Except as set forth in ¶b, below, information shall be disclosed to the following individuals:

i. Officers of the police for the investigation of a report of suspected child abuse or neglect

ii. The attorney general of the District of Columbia or agent to fulfill official duties concerning investigating and prosecuting cases of allegedly abuse or neglected children

iii. The United States attorney for the District of Columbia or agent to fulfill official duties concerning investigating and prosecuting and prosecuting cases involving allegedly abused or neglected children

iv. CFSA staff to investigate a report or provide services to the family or child who is the subject of the report

v. The District of Columbia Superior Court's Social Services Agency to investigate a report or provide services to the family or child who is the subject of the report

vi. The guardian *ad litem* for the child who is the subject of the report

vii. Each person identified in a report as responsible for child abuse or neglect, and the person's attorney

viii. The parent, guardian, custodian, or attorney of the child who is the subject of the report

ix. A child-placing agency licensing in the District for the purpose of checking a proposed foster care or adoptive placement for a report of abuse or neglect

Note: Disclosure of information for this purpose requires submission of a written consent from the person who would be licensed. See DC Code § 4-1302.03(a-1)(1)(B).

x. CFSA staff who make child placements for the purpose of checking a proposed foster care or adoptive placement for a report of abuse or neglect

Note: Disclosure of information for this purpose requires submission of a written consent from the person who would be licensed. See DC Code § 4-1302.03(a-1)(1)(B).

xi. The Child Fatality Review Committee under certain circumstances

Note: See below, for further discussion of disclosure to the Child Fatality Review Committee.

xii. Any member of a multidisciplinary investigation team (MDT) for an investigation or review conducted by the MDT (DC Official Code §4-1302.03)

b. Notwithstanding the above, CFSA may not release any information that identifies the source of a report or the witnesses to the incident referred to in a report (unless staff first obtains permission from the source of the report or from the witnesses named in the report) to the following individual:

i. A person identified in a report as a person responsible for the neglect of the child or that person's attorney

ii. The parent, guardian, custodian, or attorney of the child who is the subject of the report

iii. A child-placing agency licensed in the District of Columbia or the Agency's staff who makes child placements for the purpose of checking a proposed foster care or adoptive placement for a report of abuse or neglect, upon submission of a signed consent for release of information pursuant to DC Official Code § 4-1407.01 [DC Official Code §4-1302.03(d)]

c. Information concerning a substantiated report shall be released to the chief executive officer or director of a day care center, school, or any public or private organization working directly with children, for the purpose of making employment decisions regarding current or prospective employees and volunteers. The request for the disclosure must fulfill the following requirements:

i. Be made in writing.

ii. Clearly articulate the basis for the request.

iii. Be accompanied by a notarized consent for release of information from the Child Protection Register signed by the current or prospective employee or volunteer.

d. Information disclosed under section c above shall be limited to information pertaining to the nature and disposition of the report of abuse or neglect. In particular, the information must not include any identifying information regarding any person other than the current or prospective employee or volunteer.

e. CFSA may not disclose any information under section c above pertaining to a substantiated report that was received prior to October 19, 2002 [DC Official Code §4-1302.03(a-1)].

Note: The reason that release of the information identified in section e, above, is restricted to information received after October 19, 2002 is because of the effective date of the relevant law. The "Improved Child Abuse Investigations Amendment Act of 2002", DC Law 14-206, which includes DC Official Code §4-1302.03(a-1), became law on October 19, 2002.

f. CFSA staff investigating a report of suspected child abuse or neglect may disclose information to medical professionals for

the purpose of obtaining a diagnosis of the child who is the subject of the report.

g. CFSA may disclose information to another jurisdiction if one or both of the following apply:

i. That jurisdiction has comparable safeguards for ensuring the confidentiality of information regarding persons identified in the report and for withholding the identity of the source of the report.

ii. CFSA obtains permission for the release of the information from each person identified in the report and from the source of the report.

7. CFSA may disclose information for research and evaluation with an order from the Superior Court of the District of Columbia. Identifying information concerning any person named in a report may not be disclosed to the researcher or ***Records of child-placing agencies*** The records regarding children in CFSA's care and all facts learned about those children, and their parents or relatives, may or shall be disclosed as follows:

a. They must be available for inspection by authorities authorized by law to license child-placing agencies.

b. In accordance with rule or regulation, they may be disclosed when the Mayor or a child-placing agency determines that disclosure promotes or protects the interest and welfare of any child the Mayor or the child-placing agency has served.

c. In accordance with rule or regulation, they may be disclosed for the purpose of research if adequate safeguards are taken against the disclosure or publication in any manner of the identity of any person contained in such records [DC Official Code §4-1405(c)]

h. Evaluator (DC Official Code §4-1302.04)

7. ***Criminal records check information*** Except as provided below, the results of a criminal records check shall only be disseminated to the following individuals:

a. The person who is the subject of the criminal records check

b. CFSA, to receive and screen the results to determine the applicants suitability for approval or licensure

c. The Family Division of the Superior Court, for purpose of determining appropriateness of the placement of a child in protective supervision, a third-party placement or for adoption [DC Official Code § 4-1305.08(a)]

Note: CFSA believes that third-party placement does not provide children with the services or protections they require. It is therefore against CFSA policy for a CFSA or contract agency staff member to propose or support a third-part placement to the court. If the court orders a third-party placement over CFSA or contract agency objection, the staff member should ask the court to order that both a CPS clearance and a criminal records check be

conducted and that the results of both are provided to CFSA. Contact the Office of the General Counsel for further information.

d. In addition, CFSA may provide a licensed child-placing agency with a summary indicating whether an applicant has been convicted of or is under pending indictment for a crime that bears upon the applicant's fitness for approval, licensure, or permission [DC Official Code §4-1305.08(c)].

e. Notwithstanding the above, information may not be disclosed concerning an individual who was not an adult, or was not prosecuted as an adult, at the time to which the information pertains if the disclosure of such information is prohibited by law [DC Official Code §4-1305.08(d)].

9. ***Mental health information***
Generally, mental health information may not be disclosed without a signed authorization.

Note: see below, for further discussion of mental health information and the District of Columbia Mental Health Information Act of 1978.

10. ***Individually identifying health information***
Generally, individually identifiable health information ("protected health information" (PHI)) may only be used or disclosed pursuant to law or consistent with an authorization for the release of the information.

Note: see, HIPAA business processes for discussion of use and disclosure of PHI.

Procedure C: Mental Health Information

The use or disclosure of mental health information is governed by the District of Columbia Mental Health Information Act of 1978 (DC Official Code § 7-1201 et seq.) (Act). Pursuant to the law, no mental health professional, mental health facility, data collector or employee or agent of a mental health professional, mental health facility or data collector shall disclose or permit the disclosure of mental health information to any person, including an employer, except under certain limited conditions. Similarly, a client in a group session may not disclose or permit the disclosure of mental health information relating to another client in the group session to any person except under limited conditions (DC Official Code § 7-1201.02).

The Act also includes the following processes:

1. Protects the confidentiality of personal notes. If a mental health professional makes personal notes regarding a client, those personal notes may not be maintained as a part of the client's record of mental health information. In addition, access to those personal notes is strictly and absolutely limited to the mental health professional. They cannot be disclosed except to the degree that the personal notes or the information contained therein are needed in litigation brought by the client against the mental health professional on the grounds of

professional malpractice or disclosure in violation of the relevant law (DC Official Code § 7-1201.03).

2. Requires that a disclosure of mental health information (except an emergency disclosure) must be accompanied by a statement to the following effect:

   - The unauthorized disclosure of mental health information violates the provisions of the District of Columbia Mental Health Information Act of 1978 (§§ 7-1201.01 to 7-1207.02). Disclosures may only be made pursuant to a valid authorization by the client or as provided in title III or IV of that Act. The Act provides for civil damages and criminal penalties for violations (DC Official Code § 7-1201.04).

3. Generally requires a mental health professional, mental health facility, data collector or employee or agent of a mental health professional, mental health facility or data collector to disclose mental health information (and permits a client in a group session to disclose mental health information) upon the voluntary written authorization of the person or persons who have the power to authorize disclosure (DC Official Code § 7-1202.01).

4. Provides that mental health information that is disclosed pursuant to an authorization cannot be further disclosed by the recipient without an authorization (DC Official Code § 7-1202.03).

5. Provides that an authorization may be revoked and once revoked, no mental health information may be disclosed pursuant to the authorization. However, mental health information previously disclosed may be used for the purposes stated in the written authorization (DC Official Code § 7-1202.04).

6. Sets out the persons who have the power to authorize disclosures:

   a. If the client is 18 years of age or over, the client or client representative have the power to authorize disclosures.

   b. If the client is 15, 16, or 17 years of age, a disclosure which require authorization may only be authorized by the joint written authorization of the client and the client's parent or legal guardian. However, if the client's parent or legal guardian has not expressed consent to the mental health professional regarding the client's receipt of professional services, the client may, by written authorization, consent without any authorization from his parent or legal guardian

   c. When a client is less than 14 years of age, disclosures, which require authorization, may only be authorized by the client's parent or legal guardian. However, if the client's parent or legal guardian has not expressed consent to the mental health professional regarding the client's receipt of professional services, the client may, by written authorization, consent without any authorization from his parent or legal guardian (DC Official Code § 7-1202.05).

7. Permits a mental health professional who is primarily responsible for

	the diagnosis or treatment of a client to refuse to disclose or to limit disclosure of the client's mental health information even though such mental health information is legal to disclose by virtue of a valid authorization under certain circumstances (DC Official Code § 7-1202.06). 8. Permits the disclosure of mental health information where necessary and, to the extent necessary, to meet the requirements of District law concerning financial responsibility for the care of hospitalized persons or to meet the compulsory reporting provisions of District or federal law which attempt to promote human health and safety (DC Official Code § 7-1203.02). 9. Permits emergency disclosure under certain limited circumstances (DC Official Code § 7-1203.03).
	Procedure D: Substance Abuse 1. Federal law makes confidential records related to the "identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research" if that activity is "conducted, regulated, or directly or indirectly assisted by any department or agency of the United States". There are limited exceptions to the law; of most relevant, the prohibitions do not apply to the reporting of suspected child abuse or neglect according to State law [42 USCS § 290dd-2(a), (e)]. 2. District law makes confidential information furnished to the Addiction Prevention and Recovery Administration ("APRA") pursuant to the Choice in Drug Treatment program (see, DC Official Code § 7-3001 et seq.). That information may be disclosed only to medical personnel for purposes of diagnosis and treatment [DC Official Code § 7-3006].
	Procedure E: Penalties for Unauthorized Use or Disclosure of Information 1. An employee who fails to comply with the requirements of this policy may be subject to disciplinary action, up to and including dismissal, in accordance with Chapter 16 of the District of Columbia Personnel Manual (DPM) and applicable collective bargaining agreements. 2. Any person, who willfully discloses, receives, makes use of or knowingly permits the use of confidential information concerning a child or individual in violation of DC Official Code Title 4, Chapter 13, Subchapter I, is guilty of a misdemeanor and upon conviction fined not more than $ 1,000 (DC Official Code §4-1303.07).

	3. A staff member who willfully releases information obtained from the Child Protection Register in violation of DC Official Code Title 4, Chapter 13, Subchapter I, shall be fined not more than $ 1,000 (DC Official Code § 4-1302.08). 4. There is also a criminal penalty for unlawful disclosure of mental health information (DC Official Code §7-1207.02). 5. Agency employees and personnel of CFSA-contracted agencies shall inform persons who feel that their confidentiality has been violated by a CFSA or CFSA-contracted employee that they may call the following telephone numbers (in no particular order): a. 202-442-6153 to reach the CFSA privacy officer. i. The privacy officer shall investigate and make a determination as to whether a CFSA or CFSA-contracted employee has violated their duty to maintain confidentiality. ii. The privacy officer may elevate the matter to Human Resources. iii. Due to the confidentiality of personnel matters, the privacy officer shall not discuss the investigation or the results with the person alleging employee misconduct. b. 202-724-8477 to reach the Office of the Inspector General to report DC Government or contracted staff employee misconduct. c. 311 (non-emergencies) to notify the Metropolitan Police Department of the criminal violation of confidentiality.