

## DHS- CHILD WELFARE CONFIDENTIALITY

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POLICY I-A.3.1 & I-A.3.2

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## Who is Here?

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- Karen Moorhead - PSU
- Troy Lakey – PSU

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## Who is here, How long have you worked for DHS?

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- A) 0 to 6 months
- B) 6 months to 1 year
- C) 1 to 3 years
- D) over 3 years

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## Who is Here, What is your main Job function?

- A. Child Welfare Caseworker
- B. Child Welfare support staff
- C. Paralegal
- D. Foster parent
- E. Other

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DHS child welfare records are public records and any member of the public has the right to inspect those records.

- True
- False

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## DHS - CHILD WELFARE CONFIDENTIALITY

Confidentiality in general  
 Discovery  
 HIPAA

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## REASONS FOR CONFIDENTIALITY

- Safeguard client's right to privacy
- Prevent discrimination
- Promote treatment

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## THREE TYPES OF INFORMATION



- Strictly confidential
- Required to release
- Disclose at our discretion

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## Types of records contained in Child Welfare files

- 1) Child abuse reports & records
- 2) Child welfare records
- 3) Juvenile court records
- 4) Medical records -HIPAA
- 5) HIV records
- 6) Public Assistance records

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## Types of records contained in Child Welfare files

- 7) Substance abuse treatment records
- 8) Mental health treatment records
- 9) Educational records
- 10) Criminal history
- 11) Adoption records



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## STRICTLY CONFIDENTIAL

- Name of the reporting party
- Sealed adoption records
- Expunged juvenile court records
- Information collected during a CPS investigation while that investigation is in progress



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## REQUIRED TO RELEASE

- Child Welfare Records 409.225
- (a) About a recipient of services, to the recipient if the recipient is 18 years of age or older or is legally emancipated, unless prohibited by court order;
  - (b) Regarding a specific individual if the individual gives written authorization to release confidential information;

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## REQUIRED TO RELEASE

- (c) Concerning a child receiving services on a voluntary basis, to the child's parent or legal guardian;
- (d) To the juvenile court in proceedings regarding the child; and
- (e) Concerning a child who is or has been in the custody of the department, to the child's parent or legal guardian

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You have a case with two children, Melissa and Angelina Anderson. The girls' mother is Ashley Anderson. Melissa's father is Jacob Brown and Angelina's father is Tyrone Smith. You are preparing for a CRB because the girls have been in placement for 5 months. How many 333a's need to be written in preparation for the review?

- A) 0    C) 2  
B) 1    D) 3

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A client can revoke a release of information.

True or False?

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If a client has signed a standard DHS 2099 (Authorization for use and disclosure of information), and has authorized a substance abuse treatment program to release treatment records to DHS, DHS has the authority to forward copies to the Juvenile Court.

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True or False?

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### 42 CFR PART 2

- Federal law
- Substance abuse treatment records
- Redisclosure of information must have additional release of information



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A substance abuse treatment provider makes a report of child abuse to the hotline, and you are assigned to do the assessment. You call back the mandatory reporter to get some additional information. 42 CFR part 2 does have an exception which allows treatment staff to report child abuse. Does the exception for reporting child abuse to 42 CFR part 2 allow the treatment provider to talk with you about your additional questions?

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Yes or No

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If DHS receives a subpoena (Duces Tecum) to appear in a criminal case, the subpoena is sufficient to authorize the DHS employee to testify in the case.

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True or False?

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### OUTSIDE OF JUVENILE COURT

You must have a court order to share information from child welfare records including court hearings in:

- Criminal matters
- Domestic Relations
- Civil matters



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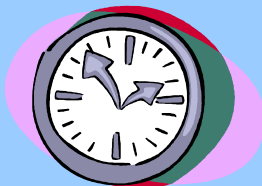
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IT'S BREAK TIME!  
BE BACK IN 15 MINUTES



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# DISCOVERY

- Who?
- Why?
- What?



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An attorney representing a parent is entitled to a copy of all of the documents in the case record.

True or False?

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# Parties:

- (a) The child
- (b) The legal parents or guardian
- (c) A putative father
- (d) The state
- (e) The juvenile department
- (f) CASA
- (g) DHS
- (h) An intervenor
- (i) The Tribe

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## Why?

- Promotes Resolution
- Reduces Conflict
- Due Process

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## ORS 419B.881

- (1) In all proceedings brought under ORS 419B.100 or 419B.500, each party, including the state, shall disclose to each other party the following information and material within the possession or under the control of the party:

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## What?

- (a) The names and addresses of all persons the party intends to call as witnesses at any stage of the hearing, together with any relevant written or recorded statements or memoranda of any oral statements of such persons

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## What?

- (b) Any written or recorded statements or memoranda of any oral statements made either by the parent or by the child to any other party or agent for any other party

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## What?

- (c) Any reports or statements of experts who will be called as witnesses, including the results of any physical or mental examinations and of comparisons or experiments that the party intends to offer in evidence at the hearing



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## What?

- (d) Any books, papers, documents or photographs that the party intends to offer in evidence at the hearing, or that were obtained from or belong to any other party

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A legal father in a juvenile court case must receive a copy of which of the following psychological evaluations as part of discovery without exception:

- a) his evaluation,
- b) the mother's evaluation
- c) both of the above,
- d) neither of the above

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## What if?

- (5) Upon a showing of good cause, the court may at any time order that specified disclosure be denied, restricted or deferred or make such other order as is appropriate

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## What if?

- (6) Upon request of a party, the court may permit a showing of good cause for denial or regulation of disclosure by the parties or the contents of subpoenaed materials, or portion of the showing, to be made in camera.

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## Pre-Jurisdiction

- With the help of the DA, Child's attorney or Parent's attorney ask the court:

We would look to the court for direction around discovery in this case due to ..  
The domestic violence, etc.

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## Post Jurisdiction

- Consult with the AAG on how to proceed

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## HIPAA

### Basic Information

- Covered Entities must comply with HIPAA
- DHS is a covered entity
- Protections do not follow the records
- Judges, private attorneys, CASA and CRB are not covered entities

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## HIPAA – Disclosure and use of PHI

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- Authorization
- Required by law
- Court order
- Subpoena

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## HIPAA- Disclosure and Use of PHI

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- HIPAA requires that anytime a covered entity releases information that information released is the minimum necessary.

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ALL DISCLOSURES UNDER  
HIPAA OF PHI WITHOUT  
AUTHORIZATION MUST BE  
RECORDED ON THE DHS 2097  
BEGINNING IN APRIL OF 2003

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## AUTHORIZED DISCLOSURES

How do you get authorization?

- DHS 2099- Health Information
- Must be completed jointly
- Informed consent



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## PSYCHOTHERAPY NOTES UNDER HIPAA

- Notes recorded by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record.

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## HIPAA – Required by Law

Includes but is not limited to:

- Court order
- Court ordered warrant
- Subpoena/summons issued by court or grand jury
- Statutes or regulations that require the production of information.



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## HIPAA – Statutes Requiring Disclosure

[http://www.leg.state.or.us/ors/ors\\_info.html](http://www.leg.state.or.us/ors/ors_info.html)

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## STATUTE SCAVENGER HUNT

Can you find the answers to the following questions in ORS?

- Does ORS allow DHS to share PHI of a child with a foster parent? The answer is in 409.225 find the section number that contains the answer.
- Can you release information about abuse allegations to a CPS agency in another state? The answer is in 419B.035. Find the section that contains the answer.

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## STATUTE SCAVENGER HUNT

Can you find the answers to the following question in ORS?

- Do you need a release of information under HIPAA to send PHI to the CRB? The answer is in 419A.102 Find the section number that contains the answer.

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### HIPAA Exceptions – Statutes Requiring Disclosure

- ORS 409.225 – Miscellaneous child welfare records
- ORS 409.230 – Records indicating child poses a clear and immediate danger to another person/society
- ORS 418.747 (13) – Records used in child fatality review process

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### HIPAA Exceptions – Statutes Requiring Disclosure

- ORS 419A.255 (1), (6), (7) – Juvenile court records.
- ORS 419A.102 (1) (b) – Records disclosed to CRB
- ORS 419A.170 (7) – Records relating to the child(ren) involved in the case disclosed to CASA.

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### HIPAA Exceptions – Statutes Requiring Disclosure

- ORS 419B.035 – Records compiled under child abuse reporting law.
- ORS 419B.195 – Records “of the child or children involved in the case” disclosed to child’s attorney
- ORS 419B.881 - Discovery

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## COURT ORDER

- No requirements specified in HIPAA
- May be written or oral
- Disclosure should be limited to only the PHI "expressly authorized by such order"

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## Subpoena with QPO

- QPO – Qualified Protective Order
- Parties have agreed to QPO & have presented one to court/tribunal
- Party seeking info has requested a QPO from court/tribunal

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## Qualified Protective Order

- Order of court or administrative tribunal or a stipulation by parties to proceeding that
- Prohibits parties from using/disclosing PHI for any purpose other than the proceeding and
- Requires return to covered entity or destruction of the PHI and all copies at the end of proceeding

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**THANK YOU**

Thank you for all the hard work you do and for sticking with us through this confusing subject!

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