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## **SECTION 6**

### Confidentiality Policies and Procedures

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## **XVIII. CONFIDENTIALITY POLICIES AND PROCEDURES**

### **A. Statement of Purpose**

These policies are intended to protect the confidentiality of information about older persons and/or their caregivers which is collected in conjunction with the inquiry for, or delivery of, services. Non-identifying statistical information, general information about the scope of any programs administered by the Division and any written policy relevant to the administration of programs (i.e. MIS related record keeping and reporting procedures) is not subject the following policies.

The Division of Aging requires that Area Agencies on Aging and service providers with whom contracts and/or subcontracts are established develop/implement and maintain written policies and procedures related to confidentiality which are in keeping with the policies outlined below.

### **B. Definitions**

Unless the context clearly specifies otherwise, the following terms are defined as follows:

1. "Agency" means Division of Aging, Area Agencies on Aging, or service provider.
2. "Client" means any applicant for, or recipient of, services administered under the auspices of the Division of Aging.
3. "Client information" or "client record" means any information, whether recorded or not, including information stored in computer data banks or files, relating to a client which was received in connection with the performance of any function of the agency.
4. "Court order" means any written order from a judge which directs explicitly the release of client information.
5. "Service provider" means any public or private agency from whom Division of Aging funded services are purchased, or authorized.

C. Policy Provision

1. Confidentiality

- a. Client information obtained by the Division, Area Agencies on Aging or service providers from an older person or their designated representative shall not be disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or legal representative unless the disclosure is required by court order, or for program monitoring by authorized Federal, State, local or other designated monitoring agencies.
- b. The agency shall assure that all authorized individuals are informed of the confidential nature of client information and shall disseminate written policy to and provide training for all persons with access to client information.

2. Information from other Agencies

If the agency receives information from another agency or individual, then such information shall be treated as any other information generated by the State Division of Aging, Area Agency on Aging or service provider and disclosure thereof will be governed by any condition imposed by the furnishing agency or individual.

3. Disclosure pursuant to other laws

Whenever federal or state statutes or regulations specifically address confidentiality issues, the agency shall disclose or keep confidential client information in accordance with those federal or state statutes or regulations.

4. Ownership of Records

All client information contained in any records of the agency is the property of the agency. Employees of the agency shall protect and preserve such information from dissemination except as indicated by the policies established in this section.

5. Security of Records

- a. The agency shall provide a secure place(s) with controlled access for the storage of client records and/or reports which contain client specific information.
- b. Only employees, students, volunteers or other individuals who must access client information in order to carry out duties assigned or approved by the agency shall be authorized to have access to such information.
- c. Only authorized individuals may remove a record/report from the storage area and that individual shall be responsible for the security of the record until it is returned to the storage area.
- d. The agency shall be allowed to destroy records in accordance with Record Retention Schedules promulgated by the Division of Archives and History, and state and federal statutes and regulations.
- e. The Area Agencies on Aging and service providers shall establish written procedures to prevent accidental disclosure of client information from automated data processing systems.

6. Release of Client Information

- a. No client identifying information, except as referenced in C-1 above, which is maintained by the Division of Aging, Area Agency on Aging or service provider shall be released to other individuals or agencies without obtaining a signed consent for release of information from the client or legal guardian.

The consent for release of information shall include, at a minimum, the following items:

- 1) name of the provider and recipient of the information;
- 2) the extent of information to be released;
- 3) the name and dated signature of the client/client representative;
- 4) a statement that the consent is subject to revocation at any time except to the extent that action has been taken in reliance on the consent;
- 5) length of time the consent is valid.

- b. The client may alter the form to contain other information which may include but is not limited to:
  - 1) a statement specifying the date, event or condition upon which the consent may expire even if the client does not expressly revoke the consent;
  - 2) specific purpose for the release.

A copy of the signed consent for release of information shall be maintained in the client record.

## 7. Informed Consent

Prior to obtaining a consent for release of information, the delegated representative shall explain the meaning of informed consent. The client shall be told the following:

- a. contents to be released;
- b. that there is a definite need for the information;
- c. that the client can give or withhold the consent and the consent is voluntary;
- d. that there are statutes and regulations protecting the confidentiality of the information.

## 8. Client Access to Records

- a. Access to information about himself is the right of the client. Upon written or verbal request, the client shall have access to review or obtain without charge a copy of the information in his records with the following exceptions:
  - 1) information that the agency is required to keep confidential from the client by state or federal statutes or regulations;
  - 2) confidential information originating from another agency as provided for in section C-2; and
  - 3) information that would breach another individual's right to confidentiality.
- b. Client's requesting access to the information contained in his record shall be provided the information as promptly as feasible but no more than 5 working days after receipt of the request.

- c. The agency director or his delegated representative shall be present when the client reviews the record. The director or his delegated representative must document in the client record the review of the record by the client.

9. Contested Information

A client may contest the accuracy, completeness or relevancy of the information in his record. A correction of the contested information, but not the deletion of the original information if it is required to support receipt of state or federal financial participation, shall be inserted in the record when the director or his designee concurs that such correction is justified. When the agency director or his delegated representative does not concur, the client shall be allowed to enter a statement in the record. Such corrections and statement shall be made permanent part of the record and shall be disclosed to any recipient of the disputed information. If a delegated representative decides not to correct contested information, the decision not to correct shall be reviewed by the supervisor of the person making the initial decision.

10. Withholding of Information from the Client

- a. When the agency director or delegated representative determines on the basis of the exceptions outlined in section C-8a to withhold information from the client record, this reason shall be documented in the client record.
- b. The director or delegated representative must inform the client that information is being withheld, and upon which of the exceptions specified in section C-8a the decision to withhold the information is based. If confidential information originating from another agency is being withheld, the client shall be referred to that agency for access to the information.

11. Disclosure of Client Information Without Client Consent

Client information included in the client record may be disclosed without the consent of the client under the following circumstances:

- a. to other employees of the agency for the purpose of making referrals, supervision, consultation or determination of eligibility;

- b. between the service provider, area agency on aging and Division of Aging for the purposes of reporting.

12. Information Needs of Service Providers

Client information may be disseminated to service providers in accordance with the release of information statement included on the client registration form. Any further disclosure will require a signed release of information form from the client.