

Table of Contents

16.05.01 - Use and Disclosure of Department Records

| | |
|---|----|
| 000. Legal Authority. | 3 |
| 001. Title And Scope. | 3 |
| 002. Written Interpretations. | 3 |
| 003. Administrative Appeal. | 3 |
| 004. Incorporation By Reference. | 3 |
| 005. Office -- Office Hours -- Mailing Address -- Street Address -- Telephone Number -- Internet Website. | 3 |
| 006. Public Records Act Compliance And Requests. | 3 |
| 007. District Court Appeals, Complaints And Requests For Reconsideration. | 4 |
| 008. -- 009. (Reserved) | 4 |
| 010. Definitions. | 4 |
| 011. Definitions For Vital Statistics. | 5 |
| 012. -- 049. (Reserved) | 6 |
| 050. Consent To Gather, Use And Disclose Information. | 7 |
| 051. Authorization For The Use And Disclosure Of Confidential Information. | 7 |
| 052. -- 074. (Reserved) | 7 |
| 075. Use And Disclosure Of Confidential Information. | 7 |
| 076. -- 099. (Reserved) | 9 |
| 100. Exceptions To Requirement For Authorization. | 9 |
| 101. Abuse, Neglect, Or Domestic Violence. | 10 |
| 102. Victim Of Other Crime. | 11 |
| 103. Serious Threat To Health Or Safety. | 11 |
| 104. Reporting Of Crime On Premises. | 11 |
| 105. Reporting Crime In Emergencies. | 11 |
| 106. -- 124. (Reserved) | 11 |
| 125. Access To An Individual's Own Record. | 11 |
| 126. -- 149. (Reserved) | 12 |
| 150. Amendment Of Record. | 12 |
| 151. -- 174. (Reserved) | 12 |
| 175. Report Of Disclosures Of Health Information. | 12 |
| 176. -- 189. (Reserved) | 13 |
| 190. Records Of Decedents. | 13 |
| 191. Data For Research Or Other Purposes. | 13 |
| 192. -- 199. (Reserved) | 13 |
| 200. Abortion For Minors. | 13 |
| 201. Abuse, Neglect Or Domestic Violence. | 14 |
| 202. Adoption. | 14 |
| 203. -- 209. (Reserved) | 14 |
| 210. Child Protection. | 14 |
| 211. Children's Mental Health. | 14 |
| 212. -- 219. (Reserved) | 14 |

| | |
|--|----|
| 220. Hard To Place Children. | 14 |
| 221. Hospital Records. | 14 |
| 222. Human Resources. | 14 |
| 223. Infant/toddler Program. | 14 |
| 224. -- 229. (Reserved) | 14 |
| 230. Medical Care. | 14 |
| 231. -- 239. (Reserved) | 14 |
| 240. Mental Illness. | 14 |
| 241. Minor's Consent Regarding Infectious, Contagious Or Communicable Disease. | 15 |
| 242. Specific Requirements - Protection And Advocacy Agencies. | 15 |
| 243. -- 249. (Reserved) | 15 |
| 250. Substance Abuse. | 15 |
| 251. -- 259. (Reserved) | 15 |
| 260. Termination Of Parental Rights. | 15 |
| 261. -- 269. (Reserved) | 15 |
| 270. Venereal Diseases. | 15 |
| 271. -- 279. (Reserved) | 15 |
| 280. Vital Statistics -- Verification Of Data. | 15 |
| 281. Vital Statistics: Disclosure For Research, Public Health Or Statistical Purposes. | 15 |
| 282. Vital Statistics: Registry Of Putative Fathers. | 15 |
| 283. Vital Statistics: Procedures For Requesting Information. | 16 |
| 284. Women, Infants And Children (WIC) Program. | 16 |
| 285. -- 999. (Reserved) | 16 |

**IDAPA 16
TITLE 05
CHAPTER 01**

16.05.01 - USE AND DISCLOSURE OF DEPARTMENT RECORDS

000. LEGAL AUTHORITY.

The Idaho Department of Health and Welfare and the Board of Health and Welfare have authority to promulgate rules governing the use and disclosure of Department records, according to Sections 39-242, 39-5403, 56-221, 56-222, 56-1003, and 56-1004, Idaho Code. (3-20-04)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 16.05.01, "Use and Disclosure of Department Records." (3-20-04)

02. Scope. These rules govern the use and disclosure of information maintained by the Department, in compliance with applicable state and federal laws, and federal regulations. (3-20-04)

a. These rules apply to all Department employees, contractors, providers of services, and other individuals or entities who request or use that information. (3-20-04)

b. These rules apply to all use and disclosure information, regardless of the form in which it is retained or disclosed. (3-20-04)

c. All individuals and entities must comply with any standards in state or federal law or regulation that contain additional requirements, or are more restrictive than the requirements of these rules. (3-20-04)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (3-20-04)

003. ADMINISTRATIVE APPEAL.

There is no provision for administrative appeal before the Department under the scope of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." To file a district court appeal, to file a complaint or to request a reconsideration to access health information, see Section 007 of these rules. (3-20-04)

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. (3-20-04)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except state holidays. (3-20-04)

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (3-20-04)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83720-0036. (3-20-04)

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (3-20-04)

05. Internet Website. The Department's internet website is <http://www.healthandwelfare.idaho.gov/>. (3-20-04)

006. PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.

Individuals have a right to review and copy records maintained by the Department, subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code, these rules, and state and federal laws that make records confidential. The Department's Administrative Procedures Section (APS) and designated custodians in Department offices receive and respond to public records requests. APS can be reached at the mailing address for the Department's business office. Non-identifying or non-confidential information provided to the public by the Department in the ordinary course of business is not required to be reviewed by a public records custodian. Original records must not be removed from the Department by individuals who make public records requests. (3-20-04)

007. DISTRICT COURT APPEALS, COMPLAINTS AND REQUESTS FOR RECONSIDERATION.

The confidentiality of health information is defined in part by the Health Insurance Portability and Accountability Act (HIPAA), Sections 262 and 264 of Public Law 104-191, 42 USC 1320d, 110 Statutes at Large 2033-4, and 45 CFR Sections 160 and 164. (3-20-04)

01. Appeals to District Court. Anyone who is aggrieved by a denial of disclosure or amendment of a public record may file an appeal in the appropriate district court in compliance with the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (3-20-04)

02. Complaints to Privacy Officer. Individuals who are dissatisfied with a Department decision regarding confidential information may file a written complaint with the Department's Privacy Officer. Complaints must be submitted to the Department's Privacy Officer at the mailing address for the Department's business office. The Privacy Officer determines if a complaint is valid and makes a recommendation for its resolution to the Department within twenty-eight (28) days after the complaint is received. (3-20-04)

a. Secretary of Health and Human Services (HHS). Complaints that involve the use and disclosure of health information may also be submitted to the Secretary of Health and Human Services at the following address: The U.S. Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, DC 20201. (3-20-04)

b. Time for filing complaints. Complaints must be filed within one hundred eighty (180) days from the date of the alleged violation. (3-20-04)

03. Request for Reconsideration to Access Health Information. The individual or legal representative may submit a written request for reconsideration to the Privacy Officer if access to health information is denied. (3-20-04)

a. The request for reconsideration must be postmarked no later than twenty-eight (28) days after notice of the denial was mailed. (3-20-04)

b. The reconsideration will be conducted by another licensed health care professional who did not participate in the original decision. (3-20-04)

c. The Department will notify the individual of the outcome of the review within twenty-eight (28) days after the request is received. (3-20-04)

008. -- 009. (RESERVED)

010. DEFINITIONS.

01. Authorization. A time-limited written consent for the disclosure of confidential information to a specific individual or entity outside the Department, and outside of normal business processes for providing Department services. (3-20-04)

02. Confidential Information. Information that may only be used or disclosed as provided by state or federal law, federal regulation, or state rule. (3-20-04)

03. Consent. Permission to use or disclose confidential information. Consent may be inferred from the circumstances. (3-20-04)

- 04. Department.** The Idaho Department of Health and Welfare. (3-20-04)
- 05. Guardian ad Litem.** The person appointed by the court, according to law, to protect the interest of a minor or an incompetent in a case before the court. (3-20-04)
- 06. Health Information.** Identifying information about the past, present or future: (3-20-04)
- a.** Physical or mental health or condition of an individual; (3-20-04)
 - b.** Provision of health care to an individual; or (3-20-04)
 - c.** Payment for health care for an individual. (3-20-04)
- 07. Identifying Information.** The name, address, social security number, or other information by which an individual could be identified. Information may also be identifying without a name, based on the context or circumstances of a disclosure. (3-20-04)
- 08. Informal Representative.** A person who is not a legal representative, but who is a relative, friend, or other person permitted to communicate with the Department on behalf of an individual. The individual or legal representative may give such permission verbally, in writing, or through his conduct. (3-20-04)
- 09. Legal Representative.** The parent of a minor, a guardian, conservator, attorney, or an individual who has an appropriate power of attorney. (3-20-04)
- 10. Minimally Necessary.** The information that is essential to provide benefits or services, and to perform normal business processes of the Department. (3-20-04)
- 11. Need-to-Know.** Confidential information that is necessary to provide benefits or services, and to perform normal business processes of the Department. (3-20-04)
- 12. Psychotherapy Notes.** Notes recorded in any format by a mental health professional that documents or analyzes the content of individual or group counseling sessions, and that are separated from the rest of the individual's medical record. The term "psychotherapy notes" excludes: (3-20-04)
- a.** Medication prescription and monitoring; (3-20-04)
 - b.** Counseling session start and stop times; (3-20-04)
 - c.** Types and frequencies of treatment furnished; (3-20-04)
 - d.** Results of clinical tests; and (3-20-04)
 - e.** Any summary of diagnosis, functional status, the treatment plan, symptoms, prognosis and progress to date. (3-20-04)
- 011. DEFINITIONS FOR VITAL STATISTICS.**
The definitions provided in Subsection 011 of these rules apply to Vital Statistics and to the disclosure provisions of Section 39-270, Idaho Code. (3-20-04)
- 01. Authorized Representative.** An attorney, physician, funeral director, a legally designated agent, or an entity whose purpose for obtaining a vital record is to pay direct benefits to a person with a direct and tangible interest defined in Subsection 011.03 of this rule. (3-20-04)
- 02. Certificate.** A certificate of birth, death, stillbirth, marriage, or divorce, filed pursuant to law, excluding information contained in the statistical section of any record. (3-20-04)

- 03. Individuals with a Direct and Tangible Interest.** Individuals who have a direct and tangible interest in a vital record are: (3-20-04)
- a.** The registrant and that person's spouse, children, parents, grandparents, grandchildren, siblings, or guardian; (3-20-04)
 - b.** A person who is conducting genealogical research on the person's own family; (3-20-04)
 - c.** Any other person who demonstrates that the record is needed for the determination or protection of that person's property right; (3-20-04)
 - d.** An authorized representative of any of these individuals; (3-20-04)
 - e.** The surviving next-of-kin if a deceased registrant has no other surviving family member listed in this subsection; (3-20-04)
 - f.** The Idaho Attorney General, and state and federal prosecuting attorneys, if such attorney submits an affidavit affirming that the record is necessary in the furtherance of the attorney's official law enforcement duties, is not reasonably available from another source, and that reasonable steps will be taken to preserve the confidentiality of the record; and (3-20-04)
 - g.** Any person, upon the order of an Idaho court of competent jurisdiction, where the court finds that disclosure of the record is necessary in the interests of justice. (3-20-04)
- 04. Parent.** Does not include a biological parent whose parental rights have been terminated. (3-20-04)
- 05. Public Health.** The science and art of: (3-20-04)
- a.** Preventing disease, prolonging life, or promoting health and efficiency through organized community effort for the sanitation of the environment; (3-20-04)
 - b.** The control of communicable infections; (3-20-04)
 - c.** The education of the individual in personal hygiene; (3-20-04)
 - d.** The organization of medical and nursing services for the early diagnosis and preventive treatment of disease; and (3-20-04)
 - e.** The development of the social machinery to ensure everyone a standard of living adequate for the maintenance of health, so organizing these benefits as to enable every citizen to realize his birthright of health and longevity. (3-20-04)
- 06. Putative Father.** The biological father of a child as identified by himself, the natural mother, an adoption agency, or a court. (3-20-04)
- 07. Registrar.** The state Registrar as defined in Section 39-241(18), Idaho Code. The mailing and street address for the state Registrar is Bureau of Vital Records and Health Statistics, 450 W. State St., 1st Floor, PO Box 83720, Boise, Idaho 83720-0036. (3-20-04)
- 08. Research.** Organized scientific inquiry or examination of data in order to discover and interpret facts. (3-20-04)
- 09. Statistical Purposes.** The collection, analysis, interpretation and presentation of masses of non-identifying numerical information. (3-20-04)
- 012. -- 049. (RESERVED)**

GENERAL CONSENT AND DISCLOSURE REQUIREMENTS
(Sections 050 Through 199)

050. CONSENT TO GATHER, USE AND DISCLOSE INFORMATION.

When individuals, legal representatives or informal representatives sign an application, they consent for the Department to gather, use and disclose information as needed for an individual to receive Department benefits or services. If none of these individuals provides a consent on an application, service may be denied. An informal representative may only consent to the disclosure of confidential information when permitted by these rules.

(3-20-04)

051. AUTHORIZATION FOR THE USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION.

An authorization for the use and disclosure of confidential information must be in writing, and identify the individual who is the subject of the record.

(4-2-08)

01. Content of Authorization. An authorization must be dated and signed by the individual or legal representative, and:

(3-20-04)

a. Identify the specific information involved; (3-20-04)

b. State the duration of the authorization, defined by a specific date or the description of an event; (3-20-04)

c. Identify the recipient of the information; and (4-2-08)

d. State the purpose for the authorization, or state that it is, "At the request of the individual," or similar wording. (4-2-08)

02. Defective Authorization. An authorization must not be acted upon if the authorization has expired or has been revoked, or if any essential information is omitted or is false. (3-20-04)

03. Authorization for the Use and Disclosure of Health Information. An authorization for the use and disclosure of health information must contain the content listed in Subsection 051.01 and the statements required by 45 CFR 164.508(c)(2). (4-2-08)

04. Psychotherapy Notes. Psychotherapy notes that are separate from the rest of an individual's record may not be used or disclosed without an authorization except to the originator of the notes for treatment or to defend the Department in a legal action brought by the individual. (3-20-04)

05. Revocation of an Authorization. An individual or legal representative may revoke an authorization at any time by submitting a written request at any Department office. (3-20-04)

06. Effect on Benefits and Services. An individual's refusal to provide an authorization does not affect the receipt of benefits or services the individual would otherwise receive. (3-20-04)

07. Copy of Authorization. The Department will provide a copy of the signed authorization to the individual or legal representative. (3-20-04)

052. -- 074. (RESERVED)

075. USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION.

Without a consent or an authorization, no one may use or disclose health or other confidential information except as provided in Section 100 of this chapter. With a consent or an authorization, confidential information will be used or disclosed only on a need-to-know basis and to the extent minimally necessary for the conduct of the Department's business and the provision of benefits or services, subject to law and the exceptions listed in these rules. Recipients of information must protect against unauthorized disclosure or use of the information for purposes that are not specified in a consent or an authorization. Access to an individual's own records is governed by Section 125 of this chapter.

Specific consent and disclosure requirements are identified in Sections 200 through 283 of these rules. (3-20-04)

01. Identity. Any individual who requests to review, copy, restrict or amend confidential information, or to sign an authorization, must provide verification of identity, and where appropriate, present proof that the individual is a legal representative of the subject of the record. Except for verifications or requests for certified copies of vital records, requests submitted by mail must be notarized if necessary to identify the individual's signature. (3-20-04)

02. Order of Court or Hearing Officer. If information is subpoenaed in a civil, criminal or administrative action, the Department will provide such information as would be disclosed with a public records request, without an order from the court or hearing officer. Alternatively, the Department may submit the record with a request for a review solely by the judge or hearing officer, and an order appropriately limiting its use by the parties. If Department staff have reason to believe that release of a record through a public records request may be detrimental to any individual, the Department may seek a protective order. (3-20-04)

03. Referent. Unless the individual is a witness in litigation, identifying information must not be disclosed about an individual who reported concerns relating to any Department responsibility, including: (4-2-08)

- a. Fraud; (3-20-04)
- b. Abuse, neglect or abandonment of a child; (3-20-04)
- c. Abuse, neglect or abandonment of a vulnerable adult; (4-2-08)
- d. Concerns about the mental health of another; and (4-2-08)
- e. Certified family homes, unless the complainant consents to disclosure in writing or disclosure is required in any administrative or judicial proceeding, in compliance with Section 9-340B(16), Idaho Code. (4-2-08)

04. Collateral Contact. Identifying information must not be disclosed about individuals who are not the subject of the record and who provide information to the Department in the ordinary course of business. (3-20-04)

05. Alternative Communication. The Department, contractors and providers must comply with an individual's request that confidential information be communicated by alternative means of delivery unless it is administratively difficult to do so or the request is unreasonable. If approved, all information from a Department program will use the same alternative means of delivery after the request is received and recorded. (3-20-04)

06. Restriction on Disclosure of Health Information. (3-20-04)

a. An individual may request in writing that use or disclosure of health information be restricted. The Department will respond in writing, and may deny the request if: (3-20-04)

- i. Disclosure is required; (3-20-04)
- ii. Necessary for the safety of the individual or others; (3-20-04)
- iii. Necessary for the provision of services, benefits or payment; or (3-20-04)
- iv. The restriction is unreasonable. (3-20-04)

b. The uses and disclosures of confidential information are subject to a restriction after it is received and recorded by the Department. Department employees, contractors, and the individual may request the Department to terminate the restriction. The Department will notify the individual of its response to a request to terminate a restriction. (3-20-04)

07. Discovery. Records will be provided only in response to valid discovery in any federal or state

criminal, civil or administrative proceeding, as required by the Public Records Act, Section 9-343(3), Idaho Code. (3-20-04)

076. -- 099. (RESERVED)

100. EXCEPTIONS TO REQUIREMENT FOR AUTHORIZATION.

Confidential information will be released without an authorization to individuals and entities in compliance with a court order, or if they are legally authorized to receive it. The following are exceptions to the requirement for an authorization: (3-20-04)

01. Advocates and Guardians. Federally-recognized protection and advocacy agencies or duly appointed guardians ad litem have access to an individual's file as necessary to perform their legal functions. Guardians ad litem have access to records as provided in Section 16-1623, Idaho Code, except for: (3-20-04)

a. Drug abuse and sickle cell anemia records maintained by the Veteran's Administration (VA), as required by 38 USC Section 7332; (3-20-04)

b. Claims under laws administered by the VA as required by 38 USC Section 3301; and (3-20-04)

c. Drug abuse prevention programs that receive federal assistance, as required by 42 USC Section 290ee - 3. (3-20-04)

02. Licensure. In compliance with Section 9-340C(9), Idaho Code, records will be released if they are part of an inquiry into an individual's or organization's fitness to be granted or retain a license, certificate, permit, privilege, commission or position. These records will otherwise be provided in redacted form as required by law or rule. (4-2-08)

03. Fugitives and Missing Persons. (3-20-04)

a. A state or local law enforcement officer may receive the current address of any cash assistance recipient who is a fugitive felon, in compliance with Section 56-221, Idaho Code. (3-20-04)

b. The following health information may be disclosed to a law enforcement officer for the purpose of identifying or locating a suspect, fugitive, material witness or missing person: (3-20-04)

i. Name and address; (3-20-04)

ii. Date and place of birth; (3-20-04)

iii. Social security number; (3-20-04)

iv. Blood type and rh factor; (3-20-04)

v. Type of injury; (3-20-04)

vi. Date and time of treatment or death, if applicable; and (3-20-04)

vii. Distinguishing physical characteristics. (3-20-04)

c. DNA, dental records, or typing, samples or analysis of body fluids or tissue must not be disclosed. (3-20-04)

04. Duty to Warn or Report. Confidential information may be released without an authorization if necessary under a legal duty to warn or to report. (3-20-04)

05. Department Business, Monitoring and Legal Functions. Department employees and contractors may use and disclose records as necessary to perform normal business functions, including health treatment, audit

and quality improvement, investigation of fraud and abuse, establishment of overpayments and recoupment, public health, or other functions authorized by law. Information will be made available to state and federal auditors and compliance monitors. Confidential information will be provided to counsel as needed to evaluate, prepare for and represent the Department in legal actions. (3-20-04)

06. Emergencies. Confidential information may be disclosed to qualified medical personnel to the extent necessary to respond to a medical emergency that requires immediate attention. (3-20-04)

07. Multidisciplinary Staffing. Confidential information may be disclosed to employees of the Department, law enforcement, and other appropriate individuals to participate in a multidisciplinary team evaluation of child protection cases under Section 16-1617, Idaho Code, or interdisciplinary Department staffing of services for an individual. All individuals who participate in such staffing must not redisclose the information and must comply with any other pertinent statute, rule or regulation. (3-20-04)

08. Collaborative Staffing. Confidential information may be disclosed in staffing by the Department and other individuals or entities if all participants are involved with the same or similar populations and have an equal obligation or promise to maintain confidentiality. Disclosure of information in inter-agency staffing must be necessary to coordinate benefits or services, or to improve administration and management of the services. Confidential information may be disclosed only on a need-to-know basis and to the extent minimally necessary for the conduct of the staffing. All individuals who participate in such staffing must not redisclose the information except in compliance with any other pertinent statute, rule or regulation. (3-20-04)

09. Elected State Official. As provided by Section 16-1629(6), Idaho Code, any duly elected state official carrying out his official functions may have access to child protection records of the Department, and must not redisclose the information. (3-20-04)

10. Child Protection Agency. A legally mandated child protection agency may provide information necessary to investigate a report of known or suspected child abuse or neglect, or to treat a child and family who are the subjects of the record. (3-20-04)

11. Legally Authorized Agency. An agency will be provided appropriate information if the agency is legally responsible for or authorized to care for, treat or supervise a child who is the subject of the record. (3-20-04)

12. Informal Representatives. Informal representatives may be permitted to receive and deliver information on behalf of an individual, and may be given health information if the informal representative is directly involved with the individual's care. Confidential information may be withheld in whole or part if professional staff determines that disclosure is not in the best interest of the individual, based on the circumstances and their professional judgement. The Department will not disclose information that is prohibited from being disclosed by these rules or any other legal requirement. (3-20-04)

13. Law Enforcement. Any federal, state, or local law enforcement agency, or any agent of such agency, may be permitted access to information as needed in order to carry out its responsibilities under law to protect children from abuse, neglect, or abandonment. (3-29-12)

101. ABUSE, NEGLECT, OR DOMESTIC VIOLENCE.

Health information may be disclosed to a law enforcement officer if the victim of abuse, neglect, or domestic violence agrees to the disclosure. (3-20-04)

01. Incapacity of Victim. If the victim is unable to agree because of incapacity, health information will be disclosed if the officer states: (3-20-04)

a. That the information is not intended to be used against the victim; and (3-20-04)

b. That immediate enforcement activity would be materially and adversely affected by waiting for the victim's agreement. (3-20-04)

02. Judgement of Professional Staff. The victim must be promptly informed that a report to law

enforcement has been or will be made unless in the judgement of professional staff: (3-20-04)

- a. Informing the victim would place him at risk of serious harm; or (3-20-04)
- b. The probable perpetrator of the abuse, neglect or domestic violence would be the recipient of the report, and disclosure would not be in the victim's best interest. (3-20-04)

102. VICTIM OF OTHER CRIME.

Health information may be disclosed in response to a law enforcement official's request about a victim or suspected victim of a crime other than those listed in Section 101 of these rules, if the individual agrees to the disclosure. (3-20-04)

01. Incapacity of Victim or Emergency Circumstance. If the individual is unable to agree because of incapacity or emergency circumstance, health information will be disclosed if the official states that the information is needed to determine whether a violation of law has occurred, and that it is not intended to be used against the individual. (3-20-04)

02. Best Interest of the Individual. The officer must also represent that immediate enforcement activity would be materially and adversely affected by waiting for the individual's agreement. Professional staff must agree that disclosure is in the best interest of the individual. (3-20-04)

103. SERIOUS THREAT TO HEALTH OR SAFETY.

Subject to the restrictions in this rule, health information may be used or disclosed if necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public. Disclosure must be based on actual knowledge or credible information from a person with apparent knowledge or authority. Disclosure will be made only to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat. (3-20-04)

01. Apprehension by Law Enforcement. Health information may be disclosed as necessary to law enforcement to identify or apprehend an individual. Disclosure is limited to an admission that an individual participated in a violent crime if it is reasonable to believe that serious physical harm has been caused to the victim. (3-20-04)

02. Escape From Law Enforcement. Health information may be disclosed as necessary for law enforcement to identify or apprehend an individual where it appears from all the circumstances that the individual has escaped from a correctional institution or lawful custody. (3-20-04)

03. Prohibition on Disclosure. Disclosure of an admission of participation in a violent crime is prohibited if the information is learned in the course of treatment to affect the individual's tendency to commit the criminal conduct, or through a request by the individual to initiate such treatment. (3-20-04)

104. REPORTING OF CRIME ON PREMISES.

Health information may be disclosed to a law enforcement official if the information constitutes evidence of criminal conduct that occurred on the Department's premises. (3-20-04)

105. REPORTING CRIME IN EMERGENCIES.

If a Department employee is providing emergency health care off the Department's premises, health information may be disclosed if necessary to alert law enforcement to a crime; the location of the crime or victim; and the identity, description and location of the perpetrator. If the crime involves abuse, neglect or domestic violence, the requirements of Section 101 of this chapter apply. (3-20-04)

106. -- 124. (RESERVED)

125. ACCESS TO AN INDIVIDUAL'S OWN RECORD.

An individual who is at least fourteen (14) years old, or a legal representative, may review and obtain a copy of Department records that pertain to the individual, subject to the exceptions listed in Subsections 125.01 through 125.04 of these rules. Requests must be in writing, identifying the individual whose record is sought, and the record or information requested. The principles of disclosing only minimally necessary information on a need-to-know basis

do not apply to a request for an individual's own records. The following information must not be disclosed: (3-20-04)

01. Children's Mental Health. Records of a child's mental health services must not be disclosed to the child when a physician or other mental health professional has noted that disclosure would be damaging to the child, unless access is ordered by a court according to Section 16-2428, Idaho Code. (3-20-04)

02. Legal Action. No disclosure will be made to an individual of information compiled in an ongoing investigation, that is exempt from disclosure, or that relates to adoption. Information compiled in reasonable anticipation of litigation that is not otherwise discoverable must not be disclosed. Information compiled for use in a civil, criminal, or administrative proceeding to which the individual is a party must not be disclosed except in compliance with valid discovery. (3-20-04)

03. Clinical Laboratories. There will be no disclosure of information maintained by a clinical laboratory except as authorized by the provider who ordered the test or study, in compliance with 42 USC 263a. (4-2-08)

04. Confidential Information. Health and other confidential information will not be disclosed to the individual if a licensed professional in an appropriate discipline determines that disclosure is likely to endanger the life or physical safety of the individual or another person. Disclosure to a legal representative will be denied if there is a professional determination that access by the representative is likely to cause substantial harm to the subject of the record or another person. (3-20-04)

126. -- 149. (RESERVED)

150. AMENDMENT OF RECORD.

Unless otherwise provided by law, individuals may request in writing to amend the content of a record created by the Department. The Department will respond in writing within ten (10) days, granting or denying the amendment. A record created by a third party will not be amended by the Department. (3-20-04)

01. Amendment of Health Information. Once an amendment regarding health information is approved and recorded, the Department will provide the amended health information when the record is disclosed in the future. If an amendment of health information is denied, the individual may provide a written response, which the Department may rebut in writing to the individual. Upon request, documentation of all the records involved in the denial will be provided whenever that information is disclosed in the future. (3-20-04)

02. Updating Identifying Information. Name and address changes, and similar updates of information in Department files will be made without using the amendment process. (3-20-04)

151. -- 174. (RESERVED)

175. REPORT OF DISCLOSURES OF HEALTH INFORMATION.

01. Documented Disclosures. The following disclosures of identifying health information for a purpose other than providing health treatment, payment or operations will be documented: (3-20-04)

- a. Required by law; (3-20-04)
- b. Public health activities; (3-20-04)
- c. Related to victims of abuse, neglect or domestic violence; (3-20-04)
- d. Health care oversight; (3-20-04)
- e. Judicial and administrative proceedings; (3-20-04)
- f. Correctional institutions or custodial law enforcement situations; (3-20-04)

- g.** Coroners, medical examiners, and funeral directors; (3-20-04)
- h.** Organ or tissue donations; (3-20-04)
- i.** Research; (3-20-04)
- j.** To avert a serious threat of health and safety; and (3-20-04)
- k.** Specialized government functions such as national security or intelligence. (3-20-04)
- 02. Documentation of Disclosure.** Documentation will identify when the disclosure occurred, to whom, what information was disclosed and for what purpose. (3-20-04)
- 03. Maintenance of Documentation.** The Department maintains documentation of these disclosures of health information for six (6) years. (3-20-04)
- 04. Request for Report of Disclosures.** An individual or legal representative may receive one (1) free report of disclosures per calendar year for six (6) years beginning April 14, 2003. Additional requests for a report of disclosures are processed as public record requests, and may be subject to fees. (3-20-04)
- 05. Pending Investigation.** The Department must suspend reporting of a disclosure of health information at the request of any federal, state or local entity that is conducting an investigation related to the oversight of health care, illegal discrimination, licensing, certification or accreditation. If the request is verbal, the suspension will terminate after thirty (30) days unless the request is renewed in writing. (3-20-04)
- 176. -- 189. (RESERVED)**
- 190. RECORDS OF DECEDENTS.**
Records of decedents are confidential for as long as the Department maintains the records, except as needed by: (4-2-08)

 - 01. Law Enforcement.** If there is suspicion that the death was the result of criminal conduct. (4-2-08)
 - 02. Coroners and Medical Examiners.** Information may be given to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. (4-2-08)
 - 03. Funeral Directors.** Confidential information may be given to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If necessary to carry out their duties, confidential information may be disclosed to funeral directors prior to and in reasonable anticipation of the individual's death. (4-2-08)
 - 04. Personal Representatives.** While records are maintained, the same confidentiality requirements apply to the personal representative of the estate or other legal representative of the deceased individual. Information may be disclosed to such representatives only to the extent necessary to perform their legal function, (4-2-08)
- 191. DATA FOR RESEARCH OR OTHER PURPOSES.**
Records that contain non-identifying information may be disclosed for Department approved research or other purposes without a written authorization. (3-20-04)
- 192. -- 199. (RESERVED)**
- SPECIFIC CONSENT AND DISCLOSURE REQUIREMENTS**
(Sections 200 Through 283)
- 200. ABORTION FOR MINORS.**

Consent for an abortion for a minor is governed by Section 18-609A, Idaho Code. (3-20-04)

201. ABUSE, NEGLECT OR DOMESTIC VIOLENCE.

Abuse, abandonment or neglect of a minor is required to be reported in compliance with Section 16-1619, Idaho Code. Abuse, neglect or exploitation of adults is governed by Section 39-5303, Idaho Code. An exception to the physician/patient privilege for domestic violence is contained in Section 9-203, Idaho Code. (3-20-04)

202. ADOPTION.

Disclosure of adoption records is governed by the provisions of Sections 9-340B(6), 16-1501, 39-258, 39-259A, and 39-7501 through 39-7905, Idaho Code. Consent to adoption by children who are more than twelve (12) years old, by parents and by others, is governed by Section 16-1504, Idaho Code. (3-20-04)

203. -- 209. (RESERVED)

210. CHILD PROTECTION.

Unless allowed by these rules or other provision of law, the Department will disclose information from child protection records in its possession upon a court order obtained in compliance with Subsection 075.02 of these rules. Disclosure of Department records under the Child Protective Act is governed by Section 16-1629(6), Idaho Code. Court records of Child Protective Act proceedings are governed by Section 16-1626, Idaho Code. Pertinent federal laws and regulations include 42 USC 5106 and 45 CFR 134.20. Information regarding child fatalities or near fatalities is required to be made public by 42 USC 5106a(b)(2)(A)(x). (4-2-08)

211. CHILDREN'S MENTAL HEALTH.

Consent to voluntary treatment for a minor with serious emotional disturbance, emergency and involuntary treatment are governed by the Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code. Section 16-2428, Idaho Code, describes requirements for confidentiality. (3-20-04)

212. -- 219. (RESERVED)

220. HARD TO PLACE CHILDREN.

The Department disseminates information to prospective adoptive families and families who wish to be appointed legal guardians of a child in the state's custody, as to the availability of hard-to-place children, adoption and guardianship procedures, and the existence of financial aid to adoptive families and guardians of hard-to-place children, in compliance with Section 56-804, Idaho Code. (3-20-04)

221. HOSPITAL RECORDS.

Records of hospitalization in a state facility are governed by Sections 39-1392b, 39-1392e and 39-1394, Idaho Code. (3-20-04)

222. HUMAN RESOURCES.

Disclosure of employee information is governed by Section 9-340C(1), Idaho Code. (3-20-04)

223. INFANT/TODDLER PROGRAM.

Consent to early intervention services and confidentiality of records that relate to the Infant/Toddler program are governed by the Individuals with Disabilities Education Act (IDEA), 20 USC 1414(a)(1)(C) and (c)(3), and 20 USC 1415(b)(3); the Family Educational Rights and Privacy Act (FERPA), 20 USC 1232g; and 34 CFR 303.400, 34 CFR 303.500 and 34 CFR part 99. (3-20-04)

224. -- 229. (RESERVED)

230. MEDICAL CARE.

Consent to apply for services or treatment is governed by Chapter 45, Title 39, Idaho Code, for hospital, medical, dental or surgical care, treatment or procedure. (4-2-08)

231. -- 239. (RESERVED)

240. MENTAL ILLNESS.

Records of assessment, treatment, and commitment or hospitalization of individuals with mental illness are governed by Sections 66-318, 66-348, 66-355, 66-329(i), 66-337, and 66-339, Idaho Code. (3-20-04)

241. MINOR'S CONSENT REGARDING INFECTIOUS, CONTAGIOUS OR COMMUNICABLE DISEASE.

Section 39-3801, Idaho Code, governs consent to treatment for infectious, contagious or communicable disease by a minor who is at least fourteen (14) years of age. (3-20-04)

242. SPECIFIC REQUIREMENTS - PROTECTION AND ADVOCACY AGENCIES.

A protection and advocacy system for individuals who have a developmental disability is created by 42 USC 15042 et seq.; for individuals with mental illness, by 42 USC 10801. Advocacy for adult protection is governed by Sections 39-5307 and 39-5308, Idaho Code. (4-2-08)

243. -- 249. (RESERVED)

250. SUBSTANCE ABUSE.

Consent to treatment and confidentiality of alcohol and drug abuse patient records are governed by 42 CFR 2.12 through 2.67, and Sections 37-2743, 37-3102, 39-307, and 39-308, Idaho Code. (3-20-04)

01. Drug Abuse. A medical practitioner will not disclose identifying information, treatment or request for treatment, to any law enforcement officer or agency or in any proceeding, in compliance with Sections 37-2743 and 37-3102, Idaho Code. (3-20-04)

02. Age Sixteen and Over. Information regarding substance abuse treatment of an individual who is at least age sixteen (16) years old will not be disclosed to a parent or guardian unless authorized by the individual, in compliance with Section 37-3102, Idaho Code, and 42 CFR 2.14. Individuals who are at least sixteen (16) years old may consent to substance abuse treatment. (3-20-04)

251. -- 259. (RESERVED)

260. TERMINATION OF PARENTAL RIGHTS.

Disclosure of information regarding the termination of parental rights is governed by Section 16-2013, Idaho Code. (3-20-04)

261. -- 269. (RESERVED)

270. VENEREAL DISEASES.

Disclosures of health information pertaining to the control of venereal diseases, including Human Immunodeficiency Virus (HIV), is governed by Title 39, Chapter 6, Idaho Code. (3-20-04)

271. -- 279. (RESERVED)

280. VITAL STATISTICS -- VERIFICATION OF DATA.

The Registrar will only confirm or deny the presence and accuracy of data already known to a governmental agency that requests information from a vital record. Such verifications may be conducted by telephone for Idaho state agencies. Other requests for verification require a signed application on forms provided or approved by the Registrar, and a copy of the front and back of signed photo identification or such other information as the Registrar requests. (3-20-04)

281. VITAL STATISTICS: DISCLOSURE FOR RESEARCH, PUBLIC HEALTH OR STATISTICAL PURPOSES.

Upon agreement in writing to such conditions as the Registrar may impose, the Registrar may permit the use of data from vital statistics records for research, public health or statistical purposes. The Registrar may deny a request for access to identifying information if the Registrar determines that the benefits would be outweighed by the possible adverse consequences to those individuals whose records would be used. (3-20-04)

282. VITAL STATISTICS: REGISTRY OF PUTATIVE FATHERS.

Except by Idaho court order or in accordance with the provisions of Section 16-1513, Idaho Code, information acquired by the confidential registry of putative fathers will not be disclosed. (3-20-04)

283. VITAL STATISTICS: PROCEDURES FOR REQUESTING INFORMATION.

Individuals who request access to, information from, or copies of vital records must present a signed application on forms provided or approved by the Registrar, and a copy of the front and back of signed photo identification or such other information as the Registrar requests. Minors who are less than fourteen (14) years old may receive certified copies of vital records that pertain to them if they present the required information. (3-20-04)

01. Expedited Copy. An expedited certified copy of a vital record may be issued using proprietary telecommunications services. (3-20-04)

02. Certified Copy. When a certified copy is issued, it is certified as a true copy or abstract of the original vital record by the officer who has custody of the record. The certified copy will include the date issued, the Registrar's signature or an authorized facsimile thereof, and the seal of the issuing office. Full or short form certified copies of vital records may be made by mechanical, electronic or other reproduction processes. (3-20-04)

284. WOMEN, INFANTS AND CHILDREN (WIC) PROGRAM.

WIC information may be used and disclosed only for the purpose of establishing the eligibility of WIC applicants and participants for health and welfare programs. (3-20-04)

285. -- 999. (RESERVED)

Subject Index

- A**
Abortion For Minors 13
Abuse, Neglect Or Domestic Violence 14
Abuse, Neglect, Or Domestic Violence 10
 Incapacity of Victim 10
 Judgement of Professional Staff 10
Access To An Individual's Own Record 11
 Children's Mental Health 12
 Clinical Laboratories 12
 Confidential Information 12
 Legal Action 12
Adoption 14
Amendment Of Record 12
 Amendment of Health Information 12
 Updating Identifying Information 12
Authorization For The Use & Disclosure Of Health & Other Confidential Information 7
 Authorization for the Use & Disclosure of Health Information 7
 Content of Authorization 7
 Copy of Authorization 7
 Defective Authorization 7
 Effect on Benefits & Services 7
 Psychotherapy Notes 7
 Revocation of an Authorization 7
C
Child Protection 14
Children's Mental Health 14
D
Data For Research Or Other Purposes 13
Definitions For Vital Statistics 5
 Authorized Representative 5
 Certificate 5
 Individuals With a Direct & Tangible Interest 6
 Parent 6
 Public Health 6
 Putative Father 6
 Registrar 6
 Research 6
 Statistical Purposes 6
Definitions, IDAPA 16.05.01, Use & Disclosure Of Department Records 4
 Authorization 4
 Confidential Information 4
 Consent 4
 Department 5
 Guardian Ad Litem 5
 Identifying Information 5
 Informal Representative 5
 Legal Representative 5
 Minimally Necessary 5
 Need-to-Know 5
 Psychotherapy Notes 5
E
Exceptions To Requirement For Authorization 9
 Advocates & Guardians 9
 Child Protection Agency 10
 Collaborative Staffing 10
 Department Business, Monitoring & Legal Functions 9
 Duty to Warn or Report 9
 Elected State Official 10
 Emergencies 10
 Fugitives & Missing Persons 9
 Informal Representatives 10
 Law Enforcement 10
 Legally Authorized Agency 10
 Licensure 9
 Multidisciplinary Staffing 10
H
Hard To Place Children 14
Health Information 5
Hospital Records 14
Human Resources 14
I
Infant/Toddler Program 14
M
Medical Care 14
Mental Illness 14
Minor's Consent Regarding Infectious, Contagious Or Communicable Disease 15
R
Records Of Decedents 13
 Coroners & Medical Examiners 13
 Funeral Directors 13
 Law Enforcement 13
 Personal Representatives 13
Report Of Disclosures Of Health Information 12
 Documentation of Disclosure 13
 Documented Disclosures 12
 Maintenance of Documentation 13
 Pending Investigation 13
 Request for Report of Disclosures 13
Reporting Crime In Emergencies 11
Reporting Of Crime On Premises 11
S
Serious Threat To Health Or Safety 11
 Apprehension by Law Enforcement 11
 Escape From Law Enforcement 11
 Prohibition on Disclosure 11
Specific Requirements - Protection & Advocacy Agencies 15
 Substance Abuse 15
 Age Sixteen & Over 15
 Drug Abuse 15
T
Termination Of Parental Rights 15
U
Use & Disclosure Of Confidential Information 7
 Alternative Communication 8
 Collateral Contact 8
 Discovery 8
 Identity 8
 Order of Court or Hearing Officer 8
 Referent 8
 Restriction on Disclosure of Health Information 8
V
Victim Of Other Crime 11
 Best Interest of the Individual 11
 Incapacity of Victim or Emergency Circumstance 11
Vital Statistics
 Disclosure For Research, Public Health Or Statistical Purposes 15
 Procedures For Requesting Information 16
 Certified Copy 16
 Expedited Copy 16
 Registry Of Putative Fathers 15
 Verification Of Data 15
W
Women, Infants & Children (WIC) Program 16