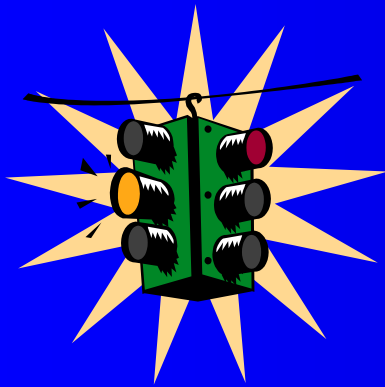


CONFIDENTIALITY

Chapter 17-1601



Presented by
Staff Development
and
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Introduction

This presentation will orient you to *Chapter 17-1601, Confidentiality*, Hawaii Administrative Rules, and changes that have been made to the previous confidentiality policies and procedures

The Department is implementing a new rule to consolidate the numerous mandated Federal and State confidentiality requirements the Social Services Division, Child Welfare Services Branch is required to comply.

Chapter 17-1601 contains provisions governing the release of confidential reports and records gathered and maintained by the Department of Human Services, CWSB.

Chapter 17-1601 is based on confidentiality provisions from Chapter 17-601, Confidentiality, and Chapter 17-920.1, Child Protective Services. These provisions have been incorporated into Chapter 17-1601.

17-1601-2, Definitions

The following new definitions have been included for clarification:

- **Authorized recipient of confidential information**
Defines those entities authorized by law to receive information contained in records maintained by the Department
- **Disclosure**
Release of information by the Department
- **Re-disclosure**
Release of information received from the Department by the authorized recipient of the information.
- **Records**
All records, written, oral or electronic gathered and maintained by the Department

17-1601-4, Disclosure of records

This section clarifies and consolidates disclosure provisions:

- **Information shall not be provided to persons not authorized to receive the information**
- **Unauthorized disclosure or unauthorized redisclosure is a violation of the statute**
- **Recipients of confidential information are required to maintain the confidentiality of the information**
- **The identity of a reporter who requests confidentiality shall only be provided with their consent or a court order**
- **Records containing communications between the Department and Attorney General shall only be released pursuant to a court order**

17-1601-5, Disclosure of information to applicants, recipients, or entities designated by the applicant or recipient to receive confidential information

- **A Department consent form must be used to request a CAN clearance**

This change was made to ensure that informed consent is provided by the individual consenting to the release.

- **The identity of the person consenting to the release of information must be authenticated**

Authentication may be accomplished by obtaining a notarized consent, in person, or any other means that provides a reasonable verification that the person who signed the consent has the right to authorize the release of information.

Section 17-1601-6, Disclosure to third parties without consent

Conditions in accordance with Federal and State statutes under which copies of the record and other information shall be released without the individual's consent (slides 9-15).

Specifies that we SHALL provide information to the listed entities who need the information to provide care and treatment to children and families.

Requires that information such as case plans, court reports, psychological evaluations, Multidisciplinary Team reports, and other information must be provided and the release of information is mandatory. The Department has determined that they need the information to ensure the safety and well being of the child and family.

17-1601-6 (a) (1-17), (Continued)

The purpose of this section is to ensure that entities with a reason and a need to have access to confidential information gathered and maintained by the Department are provided with the necessary information. They must have access to information as part of their duties, or to provide adequate care for children under our jurisdiction.

If an authorized entity listed below requests information, the decision to release information has already been made as a Departmental policy, and the information must be released.

17-1601-6 (a) (1-17), (Continued)

3) Legally authorized entities investigating, prosecuting providing services to a child or family who is the subject of a report

Includes, but not limited to, the police, military police, prosecuting attorney, foster parents, Public Health Nurses (PHN), doctors, teachers, counselors, probation officers, providers, etc.

4) A person legally authorized to place a child in custody where the child is at risk of harm and the information is needed to determine whether to remove the child

Refers to the police and any other entity who are legally authorized to remove a child from the home, such as the court.

17-1601-6 (a) (1-17), (Continued)

5) Agencies or individuals authorized, contracted, or licensed by the Department to assess, diagnose, care, treat, supervise or provide services to a child or family who is, or has been the subject of a report

Release is not limited to those below:

- **Foster parents**
- **Public health nurses**
- **Early Intervention and Healthy Start Programs**
- **Domestic violence advocates**
- **Principals, counselors and teachers**
- **Physicians, psychologists, psychiatrists**
- **Care coordinators**

17-1601-6 (a) (1-17), (Continued)

6) Multidisciplinary (MDT) or other teams under contract to provide consultation to the Department

Complete and accurate information must be provided to all the MDTs and consultants who are contracted to provide consultation to the Department

7) Licensed physicians concerned that a child under their care may be a victim of abuse or neglect

Information must be provided to physicians who are trying to determine whether a child in their care has been abused or neglected

8) A child fatality review team or citizen review panel.

This includes other reviews such as the Quality Case Reviews

17-1601-6 (a) (1-17), (Continued)

9) A coroner or medical examiner who has reason to believe that a child has died as the result of abuse or neglect

Information shall be provided to the coroner or medical examiner to investigate a child's death

10) Federal, State and local officials and their agents responsible for administering, monitoring or auditing CWS programs

Refers to the confidentiality of Title IV-E AFDC information

11) The Legislative Auditor for purposes of an audit authorized by law

This subsection has been added to allow the Department to provide information to the Legislative Auditor

17-1601-6 (a) (1-17), (Continued)

- 12) Disclosure to investigate, prosecute, or for civil or criminal proceedings conducted in connection with the administration of services provided by the Department**

Copied from HAR 17-601 to comply with the AFDC confidentiality requirements of Title IV-E

- 13) Persons not otherwise listed, at the discretion of the Department to ensure the safety of a child, or to secure services or benefits for a child subject to abuse or neglect**

Allows the Department to use information for purposes that were not included or vague in the old rule. For example, you can now provide information to extended family members, neighbors, friends, schools or agencies to search for family members that can be resources to the child and family.

17-1601-6 (a) (1-17), (Continued)

14) An individual identified as a perpetrator of abuse and/or neglect on whom an official finding or disposition was made

Clarifies that we shall inform an individual who was identified as a perpetrator of abuse or neglect of the disposition of the assessment or investigation of a report and provide timely notice and information about their right to appeal our dispositions.

15) Release to persons engaged in a research or evaluation project when approved by the Director

Provided that the researcher must maintain confidentiality

17-1601-6 (a) (1-17), (Continued)

- 16) Disclosure to the public can now be made without consent or court order by the Director or the Director's designee only**

Allows the Department to correct erroneous information that has been made public and release information when a child is missing, has suffered a near fatality, been critically injured, or is missing

- 17) Disclosure to an authorized State agency pursuant to a memorandum of agreement to conduct child abuse and neglect clearances**

Other agencies e.g. Department of Health, are allowed to use CWS information to conduct child abuse and neglect clearances themselves

17-1601-7, Restrictions against disclosure of proceedings and records relating to adoptions

All records relating to an adoption that are filed in Court must be released by the court

All records relating to an adoption not filed in Court can be released by the Department in accordance with Departmental procedures

17-1601-9, Restrictions against disclosure of information relating to human immunodeficiency virus (HIV), AIDS related complex (ARC), and acquired immune deficiency syndrome (AIDS)

New but the requirements are the same as those in our current Child Welfare Services procedures manual

17-1601-10, Restrictions against disclosure of substance abuse information

Records or other information concerning patients in an alcohol or drug abuse program, including their identity, diagnosis, prognosis and treatment is confidential. That information is provided to the Department, but we shall only redisclose that information with the informed consent of the client or through a court order as specified in this section

17-1601-11, Applicant's and recipient's right to correct case record

Each applicant or recipient of services provided by CWS has the right to request to have their record amended if they feel the information contained in the record is not accurate. The revised procedures include instructions on how to handle these requests

17-1601-12, Dissemination of material

Any material sent or distributed to recipients or applicants of CWS, shall be limited to the administration of the CWS program and to material that may be of benefit to the health and welfare of applicants and recipients, such as announcements of the availability of services and resources and notices to foster parents

17-1601-13, Penalty

Any person who fails to safeguard confidential information or who violates rules governing the confidentiality of records and information maintained by the Department may be prosecuted for a violation

Frequently Asked Questions (FAQ)

- **Must Safe Home Guidelines, Service Plans, child's psychological evaluation, MDT reports and other child related information be given to the foster parents?**

Yes, that information is needed by the foster parents to provide care to the child

- **Must we provide the child's psychological evaluation to the foster parents even if they are the child's grandparents?**
- **Yes, the foster parents need that information to understand and care for the child and to facilitate treatment and services**

FAQ (Cont.)

- **The PHN who is assigned to my case is asking for copies of the Safe Home Guidelines, MDT reports, and psychological evaluations. Do I have to provide them?**

Yes, you must. That information will help the PHN in working with the child and family. You must also provide them to other providers such as Healthy Start, CAMHD etc. who are providing services to the child and family

- **Do I need to remind people that the information I provide is confidential and cannot be shared by them with anyone?**

Yes, we need to provide information, but we should also remind people that the information we are giving them is confidential and they must not further disclose that information

FAQ (Cont.)

- **The police have requested information in an assault case where one of the parents assaulted the other. Should I provide the information?**

No, we are not allowed to provide information unless they are investigating a case of child abuse; inform them that they need a consent or court order to get the information.

- **Can we correct erroneous case information that has been made public?**

Yes, but only through the Director, who will make the final decision on what information can be provided that will not harm the child, or children, when we release that information

FAQ (Cont.)

- **Can I provide case information to neighbors, friends and family members?**

Yes, but that information must be limited to only the information that is needed for the purpose you approached the person to protect the child or to find resources that will help the child for such purposes as finding a foster home for the child, or locating a family

- **Chapter 17-1601 allows the release of the individual's psychological evaluation without going through the evaluator. How can we be sure a client will not misinterpret the information?**

If you have concerns regarding the client's ability to understand his/her psychological evaluation, consult with the MDT on the the best way to provide that information to the client

FAQ (Cont.)

- **Can I release information to the foster parents that I know will be used by them in court?**

Yes, they are entitled to the information, whether we agree with their point of view or not.

- **Can foster parents provide information to an advocacy group, such as the Hawaii Foster Parents Association or Legal Aid, to ask for assistance?**

Yes, they are allowed to use the information we provide to advocate for the child, whether we agree with their position or not.

- **Do I have to release information that is allowed by the rule, but I don't think it's a good idea?**

Yes, we must have one standard for releasing information. In the past, there have been instances where information was not provided, not because it was not allowed, but because the worker did not agree with the clients or providers

FAQ (Cont.)

- **My supervisor says he (or she) doesn't care what the procedures say and is ordering me not to provide information that I am required to provide according to the rule and our procedures. What should I do?**

If your supervisor is ordering you not to release information to entities whom the Department has determined release is appropriate and legal, the supervisor is in violation of the rule and our Departmental procedures. If you receive such an order, immediately notify your Section Administrator who will take appropriate action.

What This Means

We are implementing these changes so individuals and agencies who have a reason and need can easily access information we maintain to ensure the safety, permanency, and well-being of children. Our expectation is that all staff will comply with the rule and follow the procedures.