

Series Operating Procedures **COA:** CFOP 175-26

Procedure Name: Confidentiality of Child Welfare Case Records
Procedure Number: OP-1026
Revision #/Date: (1) 07/31/08
Effective Date: 09/30/04

Applicable to: All CBCB Staff and Contract Providers, Provider Staff and Volunteers, and Contracted Agents

SUBJECT: CONFIDENTIALITY OF CHILD WELFARE CASE RECORDS

PURPOSE: This operating procedure establishes the method to be used for assuring confidentiality of CBC of Brevard case records.

PROCEDURE

References:

Florida Statutes: Sections 39.202 (2) and (8), and 39.205 (3)
Section 39.0132 (3)
Section 39.2021 and 415.1071
Section 39.3035
Section 63.162
Sections 381.004 (3)
Section 384.29 and .34
Section 394.459 (9)
Sections 397.501 (7)
Sections 395.3025 and 456.057

Training Requirements

All CBC of Brevard employees and volunteers must receive a copy of this operating procedure upon employment or service with the CBC of Brevard. Receipt of this operating procedure shall be documented in the employee's or volunteer's personnel file. The Child Welfare Pre-Service Training curriculum shall include training on confidentiality of child welfare case records. This training shall include current revisions to confidentiality laws and shall be available on an ongoing basis.

General Requirements

1. Information in case records generated as a result of child abuse and neglect investigations is confidential and may be released only under specific circumstances which are outlined in the referenced Florida Statutes. CBC of Brevard staff should become familiar with these

statutes and should consult with the District/Region Legal Counsel or Child Legal Services (CLS) attorney prior to responding to requests for information.

2. The name of and any identifying information about the person reporting abuse or neglect is strictly confidential and must not be released (without the written consent of the person reporting) to any person other than employees of CBC of Brevard responsible for child protective services including protective investigation, the abuse hotline, or the appropriate state attorney. But see, *HRS v. Lopez*, 604 So. 2d 2 (4th D.C.A. 1992) (circuit court in criminal prosecution entitled to conduct in camera inspection of child abuse records, including name of reporter, to ensure against a Brady violation).
3. The name and all information identifying the reporter must be blacked out before allowing access by persons authorized by law to examine copies of records. Final reports of investigation can be printed without reporter information. Reports made public after petitioning the court pursuant to section 39.2021 and 415.1071, F.S., must have all names and identifying information removed or blacked out prior to release. This redaction process should be reviewed by the District/Region Legal Counsel or CLS attorney prior to releasing the information.
4. Any information in the case record that pertains to the adoption of a child or a child's sibling must not be released without first consulting with the District/Region Legal Counsel or the CLS attorney. Access to adoption records is governed by the provisions of section 63.162, F.S. and usually requires a court order.
5. If a case record contains NON-CBC of Brevard procured or funded medical, psychological, or psychiatric reports, school records, or information about clients received from domestic violence centers, which CBC of Brevard has obtained through consent of the subject, the information must not be released without written authorization of that subject. The person requesting access to the record should be told of the existence of any such report and referred to the generating source. These reports are confidential and are not ours to share without the consent of the subject.
 - a. There is a limited exception: if the report, record, or other information has been filed in the official court record, section 39.0132 (3), F.S., allows access to the child, parents or legal custodians of the child and their attorneys, law enforcement agencies, and CBC of Brevard and its designees.
 - b. Also, section 39.0132 (3), F.S., does not apply to reports or opinions which form the basis for a dependency petition and which may be discoverable under the Rules of Juvenile Procedure. When a request for information pertaining to a case in dependency litigation is received, the District/Region Legal Counsel or CLS attorney must be consulted prior to release.
6. All records and reports of the child protection team (CPT) are confidential and exempt from the provisions of sections 119.07(1) and 456.057, F.S., and shall not be disclosed, except, upon request, to the state attorney, law enforcement, CBC of Brevard, and necessary professionals in furtherance of the treatment or additional evaluative needs of the child, or by order of the court. See CBCB OP #20, Child Protection Teams and Sexual Abuse Treatment Programs.
7. Anyone to whom copies of an abuse report and related case material are given is subject to the same requirements to maintain confidentiality as is CBC of Brevard employee releasing the information. For this reason, recipients of case material, other than authorized department staff and the guardian ad litem representing the child are asked to

sign an affidavit that they understand their responsibility to maintain confidentiality and the penalty for violations.

Access to Records

1. Pursuant to section 39.202 (2), F.S., the following persons or entities have access to CBC of Brevard records of child abuse, neglect or abandonment:
 - a. Employees of the Department of Children and Families responsible for child protective investigations, ongoing child protective services, or licensure or approval of adoptive homes, foster homes, or other homes used to provide for the care and welfare of children (because licensing files are public record, any abuse or neglect records must be kept segregated to avoid inadvertent disclosure), or services for victims of domestic violence when provided by certified domestic violence centers working at the Department's request as case consultants with shared clients.
 - b. Employees or agents of the Department of Juvenile Justice who are responsible for the provision of services to children.
 - c. Criminal justice agencies of appropriate jurisdiction, including but not limited to, Florida Department of Law Enforcement, county sheriffs' offices, local police offices, probation and parole, the Department of Juvenile Justice, and the FBI.
 - d. The state attorney of the judicial circuit in which the child resides or in which the alleged abuse or neglect occurred (access includes name of reporter).
 - e. The parent or legal custodian of any child who is alleged to have been abused, neglected, or abandoned, and the child, and their attorneys, including any attorney representing a child in civil or criminal proceedings. Access must be granted no later than 30 days after the department receives the initial report of abuse, neglect or abandonment. However, any information otherwise made confidential or exempt by law (such as food stamp records, independent medical, psychological, psychiatric reports, CPT records, and HIV information) shall not be released pursuant to this paragraph.
 - f. Any person alleged in the report as having caused the abuse, neglect, or abandonment of a child. Access must be granted no later than 30 days after the initial report. Any information otherwise made confidential (see paragraph (5) above) shall not be released.
 - g. A court upon its finding that access to such records may be necessary for the determination of an issue before the court; however, such access shall be limited to inspection *in camera*, unless the court determines that public disclosure of the information is necessary for the resolution of an issue then pending before the court.
 - h. A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business.
 - i. Appropriate officials of the Department of Children and Families, Division of Administrative Hearings, a Florida advocacy counsel, Auditor General or O.P.A.G.A., Public Employees Relations Commission, and the guardian ad litem for the child, if related to case-specific activity.

- j. Employees or agents of a counterpart social services agency in another state, if related to case-specific activity.
 - k. Any person authorized by the Department engaged in bona fide research.
 - l. Any person in the event of the death of the child determined to be the result of abuse or neglect.
 - m. The principal of the school where the child is a student.
 - n. Staff at a children's advocacy center that is established and operated under section 39.3035, F.S.
2. CBC of Brevard may release to professional persons such information as is necessary for the diagnosis and treatment of the child or the person perpetrating the abuse.

NOTE: CBC of Brevard employees should rely on the complete listing in section 39.202 (2), F.S. and not rely solely on the listing in this operating procedure. If there is any question whether a record should be released, consult with the district/region/central legal office.

HIV/AIDS Records

The following procedures shall apply to HIV/AIDS records and information access:

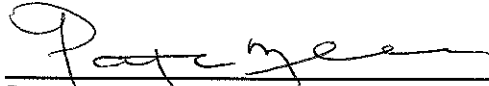
1. Case narrative will not contain any reference to the child's HIV infection or AIDS.
2. CBC of Brevard and any contracted child placing agency shall disclose to adopting or substitute care parents the medical condition, but not the name, of an HIV/AIDS positive child prior to the decision to adopt or accept the child into the substitute care home has been made by the parents. Only after the parents have made the commitment to adopt or accept the child into the home shall the name of the child be provided.
3. The substitute care parents shall be provided with documentation of the complete medical history and condition of a child placed in their care, including HIV/AIDS status. This documentation must be maintained by the substitute care parents and held as confidential information with access strictly limited to the child's physician(s) and other providers of medical and dental care when treatment is required.
4. Medical documentation needed for school enrollment, day care or similar purpose must be provided separately by the physician and may not contain any reference to the child's HIV/AIDS status.
5. With the exception of the child's medical records provided to substitute care parents (and to the child's natural parents or other legal guardian), case material which discloses that the child has HIV infection or AIDS will be kept within the file in a "Confidential Information" envelope used to safeguard sensitive case information.
6. The child's case records will not be segregated or flagged in any way which would permit their identification as case records of HIV infected children.

Penalties

1. A person who knowingly and willfully makes public or discloses to any unauthorized person any confidential information contained in the central abuse hotline is subject to the penalty provisions of section 39.205 (3), F.S. (second degree misdemeanor).

2. A person who unlawfully discloses HIV/AIDS information is subject to the penalty provisions of section 384.34, F.S.

BY DIRECTION OF THE CHIEF EXECUTIVE OFFICER:



DR. PATRICIA NELLIUS-GUTHRIE
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APPROVAL DATE: 11/4/08