

Licking County Board of Developmental Disabilities

Administrative Policy Manual

Policy: Confidentiality of Person-Specific Information

Board Approved: 2/83

Revised: 8/85, 6/93, 8/01, 3/03, 6/09, 6/17

Reviewed: 8/11, 4/14, 9/14

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I. GENERAL POLICY

It is the responsibility of the Licking County Board of Developmental Disabilities, hereinafter referred to as the Board, to safeguard each person's right to confidentiality in the receipt of services provided by or paid for by the Board. The Board will conform to all requirements for privacy and confidentiality set forth in the Health Insurance Portability Accountability Act (HIPAA) and other applicable federal and state law.

This policy applies when the Board is acting in its capacity as a Covered Health Care Provider (Medicaid vendor) or a Health Plan under HIPAA, and when the Board is the purchaser of services for eligible people. If the Board is acting in more than one capacity, it acknowledges it is subject to the requirements applicable to that function and will use or disclose personally identifiable information only for purposes related to the function being performed.

All information contained in a person's records, including billing, utilization, and service specific information maintained electronically or in hard copy, is considered confidential and will not be disclosed without a valid authorization, except in accordance with applicable requirements. The Board may use personally identifiable information in the performance of treatment, payment and health care operations without a person's release or authorization when the Board is authorized by the person or his/her legal guardian to be the provider of services. Person-specific records in hard copy are maintained in a secure location and access to them limited. The content of person-specific records is never a subject for discussion by Board staff, except as an invited member of the person's planning team.

Board staff will obtain written consent from a person, his or her guardian, or parent of a minor before releasing information to persons not otherwise authorized to receive such information pursuant to applicable state and federal regulations including 5101:1-1-03 of the Ohio Administrative Code when applicable.

Generally, requests for disclosure of records must be limited to the minimum which is reasonable and necessary to accomplish the purpose of the use, disclosure or request. The following are exceptions to this general principle:

- A. The minimum necessary standard does not apply to disclosures to the person supported.
- B. When a person has authorized disclosure, the scope of disclosure shall be in accordance with the authorization.
- C. Disclosures required by law or for monitoring purposes are made in accordance with the authority seeking the information.

The Board will determine what personally identifiable information needs to be accessible to staff filling various positions on the table of organization. A breach of confidentiality occurs when a person's confidential information is passed along to a party that is not authorized to receive the information without the person's, parent's or legal guardian's knowledge and consent.

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The Board may use or disclose personally identifiable information incidental to a use or disclosure otherwise permitted or required by applicable requirements.

- A. An incidental use or disclosure is a secondary use or disclosure that cannot reasonably be prevented, is limited in nature, and that occurs as a result of another use or disclosure that is permitted by state and federal regulations.
- B. Permissible incidental uses and disclosures are those that occur as a by-product of another permissible or required use or disclosure, as long as the Board has applied reasonable safeguards and implemented the minimum necessary standard where applicable, with respect to the primary use or disclosure.
- C. An incidental use or disclosure is not permitted if it is a by-product of an underlying use or disclosure which violates applicable requirements and Board procedures.

The Board shall mitigate, to the extent practicable, any known harmful effect resulting from the use or disclosure of protected information in violation of this Policy and related procedures.

Confidentiality procedures specific to children will be in accordance with the Education for Children of special Needs, OAC 3301-51-02. A person of legal age (18) with no court-appointed legal guardian has the right to act in his/her behalf in all matters related to confidentiality, records access, consent, maintenance, dissemination, disclosure and destruction of person-specific records. Throughout the remainder of this policy, "person" refers to the person receiving services, parent of a minor or a court-appointed legal guardian of the person, unless otherwise stated.

The provisions of this policy apply to Board members, staff, temporary or contract service staff, volunteers/interns, and all providers of services to eligible individuals with whom the Board contracts. The Superintendent of the Board will designate a person to be the Privacy Officer for the Board. The Privacy Officer is responsible for overseeing the implementation of this Policy and related procedures relating to the safeguarding of personally identifiable information. For the purposes of this policy the Director of Service Coordination is the Privacy Officer.

II. NOTICE OF PRIVACY/CONFIDENTIALITY POLICY AND PRACTICES

- A. The Board will give adequate notice of the uses and disclosures of personally identifiable information that may be made by the Board. Notice will include the person's rights and the Board's legal duties with respect to personally identifiable information.
- B. The Board must provide written notice of Confidentiality/Privacy Practices:
 - 1. No later than April 14, 2003 to all persons enrolled in Board services;

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2. At the time of admission to persons who enter Board services after April 14, 2003;
3. In an emergency treatment situation, as soon as reasonably practicable;
4. Within 60 days of a material revision to the notice, all persons enrolled in Board services.

C. The notice is posted on the Board’s website at lcountydd.org.

Acknowledgement of Notice

D. Except in an emergency situation, the Board will make a good faith effort to obtain a written acknowledgement of receipt of the initial notice provided. If the written acknowledgement is not obtained, good faith efforts to obtain such acknowledgement should be documented and include the reason the acknowledgement was not obtained.

E. An acknowledgement is not required for:

1. Revised notices; or
2. Periodic notification of availability of notice and how to obtain notice.

Making Notice Available

F. The notice is available to eligible persons on the Board’s website and at all sites operated by the Board.

G. The notice is posted in each Board building in a clear and prominent location where it is reasonable to expect persons seeking service from the Board to be able to read the notice.

H. Whenever the notice is revised, the Board shall make the notice available upon request on or after the effective date of the revision and will promptly post as required in G above.

Required Content of Notice

I. The notice of privacy practices must be written in plain language and must contain the following elements:

1. The following statement or header: “THIS NOTICE DESCRIBES HOW MEDICAL AND OTHER INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY”.

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2. A description, including at least one example, of the types of uses and disclosures that the Board is permitted to make for purposes of treatment, with sufficient detail to place a person on notice of the uses and disclosures permitted or required. The description should clarify that any disclosure outside of the Board requires prior authorization;
3. A description, including at least one example, of the types of uses and disclosures that the Board is permitted to make for purposes of payment and health care operations, with sufficient detail to place a person on notice of the uses and disclosures permitted or required;
4. A description of each of the other purposes for which the Board is permitted or required to use or disclose personally identifiable information without a person's consent or authorization, with sufficient detail to place a person on notice of the uses and disclosures permitted or required;
5. A statement that other uses or disclosures are made only with the person's written authorization, and that the authorization may be revoked in accordance with this policy.
6. A statement of the person's rights with respect to his/her personally identifiable information and a brief description of how the person may exercise those rights, including: the right to request restrictions on certain uses/disclosures of personally identifiable information and the fact that the Board does not have to agree to such restrictions; the right to receive confidential communications of personally identifiable information; the right to inspect and copy personally identifiable information upon written request; the right to amend personally identifiable information; the right to receive an accounting of disclosures of personally identifiable information, and; the right to receive a paper copy of the privacy notice.
7. A statement of the Board's duties with respect to personally identifiable information including: the legal requirement to maintain the privacy of personally identifiable information and to provide persons with notice of its legal duties and privacy policies; and the Board is required to abide by the terms of the currently effective privacy notice;
8. A statement that the Board reserves the right to change the terms of the notice and make the new notice provisions effective for all personally identifiable information maintained, along with a description of how the Board will provide persons with the revised notice;

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9. A statement that persons may complain to the Board and to the Secretary of the U.S. Department of Health and Human Services about privacy rights violations, including a brief statement about how a complaint may be filed and an assurance that the person will not be retaliated against for filing a complaint;
 10. The name or title and telephone number of the person or office to contact for further information;
 11. The effective date of the notice, which may not be earlier than the date printed or published.

Notice of Revisions

- J. When there is a material change to the uses or disclosures of personally identifiable information, the person's rights, the Board's legal duties, or other privacy practices described in the notice, the Board shall provide a notice of such change.
 1. Notice of material changes shall be made no later than 60 days after the change is effective.
 2. Except when required by law, a material change to any term may not be implemented prior to the effective date of the notice reflecting the change.
 3. The Board is not required to obtain acknowledgement of a revised notice.
- K. The notice will be posted on the Board's website.
 1. The Board may provide the notice required by this section to an person by e-mail, if the person agrees to electronic notice and such agreement has not been withdrawn. If the Board knows that the e-mail transmission has failed, a paper copy of the notice must be provided to the person. Notice which is provided in accordance with this section and in a timely manner is sufficient to meet HIPAA requirements.
 3. The person who is the recipient of electronic notice retains the right to obtain a paper copy of the notice from the Board upon request.

III. SAFEGUARDS

- A. All Board staff that collect, maintain, use or otherwise have access to personally identifiable data are informed of this confidentiality policy and related procedures and are responsible for implementing them.

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- B. Each Component Director is assigned the responsibility for assuring the confidentiality of any personally identifiable data for persons served by the component.
- C. Staff are prohibited from using private e-mail accounts, private phone numbers or personal electronic devices to conduct Board business.
- D. Additional procedures designed specifically to assure the privacy and confidentiality of data maintained electronically are located in the Board's HIPAA Security Policy and Procedures.
- E. Each component will maintain, for public inspection, a current listing of the staff positions within the component who have access to person-specific records.

IV. ACCESS RIGHTS

- A. A person, parent of a minor or court-appointed legal guardian, has the right to inspect and review any record related to the services he or she has received from the Board.
- B. The Board will presume that the guardian or parent of a minor has authority to inspect and review records relating to the child, unless the Board is notified in writing that the parent does not have the authority. This could occur in cases where the parents are legally separated or divorced, or in the case of a child with a Court appointed guardian who is not one of the child's parents.
- C. The Board will comply with a person's request for access to confidential material about him/herself within five (5) working days of the verbal or written request. Board staff will assist in interpretation of information contained in the records when needed. Requests occurring before a person's support planning meeting, or a hearing relating to identification, evaluation or placement of a child will receive immediate (within 24 hours) response.
- D. The Board will provide the person with access to his/her records in the form or format requested, if it is readily producible in such form or format; or, if not, in a readable hard copy or such other form or format agreed to by the Board and the person.
- E. If the Board does not maintain the information that is the subject of the person's request, and knows where the requested information is maintained, the Board will inform the person where to direct their request.
- F. The Board may charge a fee for copies of records, which are made for the person, if the fee does not effectively prevent the person from exercising the right to inspect and review those records.
- G. The Board may not charge a fee to search for or retrieve information requested by a person or his/her guardian.

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- H. Any record taken from the Board building where it is normally maintained will only occur in conformity with the Board component sign-out procedures for person-specific records and for reasons approved by the Superintendent. A person's record is removed from a component's jurisdiction and safekeeping only in accordance with a court order or subpoena.
- I. The Board will comply with the requirements of any validly executed subpoena or warrant consistent with the time specified for compliance. Upon receipt of a subpoena, warrant or other legal document requesting information/records or compelling testimony, the staff member will notify his/her component director. The component director will review the subpoena, warrant, or legal document, notify the Superintendent who will arrange for a copy of the document to be sent to the Licking County Prosecutor's office for review of the validity and scope of the instrument. Board staff will follow the advice/direction provided by the Prosecutor's office in all instances.
- J. Each Component Director or designee will implement procedures to keep a record of parties given access to each person-specific record. Record of access/disclosure shall be kept on parties reviewing the files and of parties to whom information is sent, including:
 - 1. Name of the party and if known, address;
 - 2. Brief description of information accessed;
 - 3. Date access was given; and
 - 4. Purpose for which the party is authorized to use the data.
- K. A list of the types and locations of service delivery records collected, maintained, and used by each component will be provided upon request.
- L. If any record includes information on more than one person, the person requesting the record, will have the right to inspect and review only the information relating to her/himself.

V. PRIOR CONSENT FOR RELEASE OF INFORMATION

- A. In compliance with 45 CFR Part 164 and Chapter 5126.044(B) of the Ohio Revised Code all uses and disclosures of personally identifiable information beyond those otherwise permitted or required by law require a signed authorization or "Release of Information".
- B. Personally identifiable information from the record of a an eligible person may be disclosed without the written consent of the person, if the disclosure is:

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1. To other Board staff who have been determined by the Superintendent or Component Director to have a legitimate interest or involvement in the provision of services and supports or monitoring for outcomes and results;
 2. To officials of a school district or other educational agency in which the person/student seeks or intends to enroll;
 3. To federal and state officials, in connection with the audit and evaluation of federally or state supported programs, or in connection with the enforcement of or compliance with the legal requirements which relate to these programs;
 4. To those required by law;
 5. For public health activities;
 6. About victims of abuse, neglect or domestic violence;
 7. For health oversight activities, such as investigations, audits, inspections and accreditation activities;
 8. For judicial and administrative proceedings, including in response to a duly executed warrant, subpoena or major unusual incident (MUI) investigation;
 9. For law enforcement purposes;
 10. For cadaveric organ, eye or tissue donation purposes;
 11. To avert a serious threat to health or safety;
 12. For specialized government functions; and,
 13. For worker's compensation.
- C. Each component will obtain prior written releases of information from a person before disclosing personally identifiable information from the records of that person, other than directory information, and as provided for in Section III, 1 (1-14) above, of this policy. The written consent required by this paragraph must be signed by the person legally authorized to give consent and include at a minimum:
1. A specific and meaningful description of the information to be used or disclosed;
 2. The name or identification of the person or class of person(s) authorized to make the use or disclosure;

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3. The name or identification of the person or class of persons(s) to whom the requested use or disclosure may be made;
 4. Purpose of the disclosure or statement that disclosure is at request of the person;
 5. An expiration date or expiration event that relates to the person or the purpose of the use or disclosure;
 6. A statement of the person's right to revoke the authorization in writing, and any exceptions to the right to revoke, together with a description of how the person may revoke the authorization;
 7. A statement that there is the potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient if the recipient is not subject to federal or state confidentiality restrictions;
 8. The dated signature of the person; and
 9. If the authorization is signed by a personal representative of the person, a description of the representative's authority to act on behalf of the person.
- D. Disclosure of information also includes verbal sharing (meetings, telephone conversations, etc.), which requires written consent, as outlined above. Record of such disclosure will be recorded in meeting minutes or case notes.
- E. Directory information may be disclosed by a component without prior consent, if the following conditions are met:
1. Persons are given an annual notice of categories of personally identifiable information which has been designated as directory information.
 2. At any time a person has the right to refuse the designation of any or all of the categories of personally identifiable information as directory information.
- F. Board staff will transmit information to a requesting person or agency after receiving a properly authorized written request.
- G. The Board may condition the provision of treatment, payment, enrollment, or eligibility for benefits on the provision of an authorization, when:
1. The Board is acting as a covered health care provider (Medicaid vendor); and

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2. The authorization is for determining eligibility for Board services or enrollment determination relating to the individual; and
 3. The authorization is not for the use or disclosure of psychotherapy notes.
- H. The Board may condition the provision of health care that is solely for the purpose of creating personally identifiable information for disclosure to a third party on provision of an authorization for the disclosure of the personally identifiable information to such third party.

Combining Authorizations

- I. An authorization can permit disclosure for more than one purpose except that:
1. An authorization for use or disclosure of psychotherapy notes may only be combined with another authorization for use or disclosure of psychotherapy notes, and
 2. An authorization for use or disclosure of personally identifiable information for research may only be combined with another authorization for use or disclosure of personally identifiable information.
- J. An authorization which is required as a condition for treatment, payment, enrollment or eligibility for benefits cannot be combined with another authorization.
- K. An authorization cannot be combined with another document such as a notice or consent for treatment.

Right to revoke

- M. A person or his/her legal guardian may revoke a release of information at any time. The revocation may be in writing or be received verbally and documented by the staff member that received it. If the written or verbal request contains no specific expiration date, it will be assumed that permission to release information is revoked immediately upon the release of the authorized information.
- N. A Release of Information is not valid if it has any of the following defects:
1. The expiration date or event has passed;
 2. The release was not filled out completely;
 3. The release is revoked, either verbally or in writing;
 4. The release violates requirements regarding compound releases.

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Verification

- O. The Board will take reasonable steps to verify the identity of a person receiving personally identifiable information and the authority of any such person to have access to personally identifiable information. The Board may rely, if such reliance is reasonable under the circumstances, on documentation, statements, or representations that, on their face, meet the applicable requirements.
- P. In accepting an authorization from a personal representative of a person, the Board must document that the person has designated the personal representative to act on the person's behalf. The Board may rely, if such reliance is reasonable under the circumstances, on documentation, statements, or representation that, on their face, meet the applicable requirements.

VI. DESTRUCTION OF RECORDS

The Component Director or designee will inform the person when personally identifiable information collected, maintained or used by the Board is no longer needed to provide services to the person, or has been kept the length of time specifically required by any applicable Board policy, federal, state, or local requirement.

Information will be destroyed with the written consent of the person, or his/her guardian. Each component will have procedures in place for the destruction of person-specific records that include provisions for maintaining a written record of all information/documents destroyed, and provisions to assure that persons are offered a copy of whatever records are destroyed.

1. Destruction of Person-Specific Information is the responsibility of each Component Director and will be conducted on the basis of approved record retention schedules.
 - Prior to the destruction of any Person-Specific Information, the Board will send a Letter of Intent to Destroy Information to the person or his/her guardian.
 - The letter will be sent via certified mail service.
 - The letter will specify which records, documents or forms are targeted for destruction.
 - The person or his/her guardian may request copies of all, some or none of the information to be destroyed. If no response is received within thirty (30) calendar days, destruction of the targeted records will occur and a hard copy of what was destroyed mailed to the person or his/her guardian.
 - Letters of intent will be kept as a part of the person's permanent record.
 - Upon a person's death, the file will be marked with a date for destruction. This destruction will be seven (7) years after the last service funded in part by Medicaid was provided to the person or six (6) years after completion of a Medicaid audit of that service, whichever date is later. Unless there is a pending investigation or litigation, destruction of the person-specific records will occur at that time.

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2. A permanent record of a person's name, address, phone number, attendance record if applicable, service received, levels completed if applicable, and year completed may be maintained without limitation.

VII. AMENDMENT OF RECORD AT PERSON'S REQUEST

- A. A person who believes that information in records collected, maintained, or used by the Board is inaccurate or misleading or violates the privacy or other rights of the person may request that the information be amended.
- B. Board staff will direct the request to the Component Director who reviews the information and decides whether amending the information is appropriate after a review of the facts. This will occur within ten (10) days of the person's request.
- C. If the Component Director determines that no factual reason to amend the record exists, then the person's Service Coordinator will advise the person of his/her right to a records hearing. The purpose of a records hearing is to ensure that information contained in an person's record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the individual.
- D. If the person chooses to proceed with a records hearing, it will be scheduled and conducted as follows:
 1. The records hearing will be held within fourteen (14) days of the request, and the person will be given notice of the date, place and time, at least seven (7) days in advance of the hearing.
 2. The records hearing will be conducted by a representative of the Board designated by the Superintendent who does not have a direct interest in the out come of the hearing.
 3. The person will be afforded a full and fair opportunity to present evidence relevant to the issues, and may be assisted or represented by persons of his or her choice, at his/her own expense, including an attorney.
 4. The Board representative designated by the Superintendent to conduct the hearing will make his/her recommendation in writing to the Superintendent within ten (10) days after the conclusion of the hearing. This recommendation will be based solely upon the evidence presented at the hearing and will include a summary of the evidence and the reasons for the decision.
- E. The Superintendent will make the final decision regarding the amendment of a record, and so inform the person in writing, which will include a written rational for the decision.

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- F. The Superintendent will also inform the person in writing of the right to place in the records maintained by the Board, a written statement from the person setting forth reason(s) for disagreeing with the information contained in the record. Any explanation placed in the record(s) will be maintained by the Board as part of the person-specific record(s), of the person as long as the record(s) or the contested portion of the record is maintained. If the record(s) of the person or the contested portion are released to any party, the explanation must also be disclosed to the party.

VIII. COMPLAINT AND GRIEVANCE PROCEDURES

- A. The Board shall follow its Policy and related Procedures on Complaint Resolution and Appeals of Adverse Action whenever a person has a complaint(s) about the implementation of this policy and any related procedures.
- B. The Privacy Officer and Compliance Officer, designated by the Superintendent, will be notified of each such complaint and will participate in the review of such complaints.
- C. The Board will inform persons who make a complaint under this section of their right to file a complaint with the Secretary of Health and Human Services. Upon request, the person will be assisted in filing a complaint with the Secretary of Health and Human Services.
- D. The Board will document all complaints received and the disposition of each complaint, if any.

IX. SANCTIONS

- A. Failure of any Board staff to comply with the provisions of this Policy may result in corrective action consistent with Board Personnel Policies, Section 6.1.
- B. The Board will not impose corrective action against a staff member or business associate who believes in good faith that another Board staff member(s) has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by the Board or one of its contractors potentially endangers a person(s) served by the Board, and the disclosure is to a health oversight agency such as the Ohio Department of Developmental Disabilities, or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of the Board.

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X. RELEASE OF RECORDS UPON DEATH

A. Ohio Revised Code Section 5126.044(D) provides that when an eligible person who receives services from the Board dies, the Board or entity under contract with the Board, will, on written request, provide to the following persons any reports and records in the Board or contractor's possession concerning the eligible person.

1. To the executor or administrator of the person's estate if the report or records are necessary to administer the estate of the person who is the subject of the reports or records.
2. To the guardian of the person who is the subject of the reports or records. If the person had no guardian at the time of death, records can be released to a person in the first applicable of the following categories:
 - i) The person's spouse;
 - ii) The person's children;
 - iii) The person's parents;
 - iv) The person's brothers or sisters;
 - v) The person's uncles or aunts;
 - vi) The person's closest relative by blood or adoption;
 - vii) The person's closest relative by marriage.

B. The Board or contractor will provide the reports and records no later than thirty (30) days after receipt of the request.

XI. DOCUMENT MANAGEMENT

A. The Board will maintain written or electronic copies of policies and procedures, communications, actions, activities or designations required by Board policy for a period of six (6) years from the date of creation or the last effective date, or a longer period if required under state or federal law.

1. The Board will retain documentation of services reimbursed by Medicaid, and related fiscal data for a period of seven (7) years from the date of receipt of payment or for six (6) years after any audit is completed and adjudicated, whichever is longer. These records shall be available for any partial or full review.

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2. The Board shall retain all records and forms, including, but not limited to Individual Support Plans, necessary to fully disclose the extent of services provided and related business transactions for a period of seven (7) years from the date of receipt of payment, or for six (6) years after any initiated audit is completed and adjudicated, whichever is longer.