

Mike DeWine, Governor
Kimberly Hall, Director

July 22, 2020

Family, Children and Adult Services Manual Transmittal Letter No. 434

TO: Family, Children and Adult Services Manual Holders

FROM: Kimberly Hall, Director

SUBJECT: Five Year Review for the Confidentiality Rule of the Ohio Administrative Code (OAC)

This letter transmits revisions for a five-year review to the following Ohio Administrative Code (OAC) rule: 5101:2-33-21. These changes will be effective August 1, 2020.

The following is a brief explanation of the changes.

OAC 5101:2-33-21 entitled **Confidentiality and dissemination of child welfare information** sets forth the PCSA requirements for the release or dissemination of child welfare case records pertaining to referrals, assessments/investigations and provision of ongoing services. Language was included to clarify the requirements for the release of information to guardians ad litem or court appointed special advocates; school administrator for any child in the custody of the PCSA; individuals submitting an alleged perpetrator check to ODJFS; and a designee approved by the PCSA director.

INSTRUCTIONS:

The following chart identifies the material that needs to be removed from the Family, Children and Adult Services Manual (FCASM) and the material that should be added.

LOCATION	REMOVE AND FILE AS OBSOLETE	INSERT/REPLACEMENT
MANAGEMENT AND ADMINISTRATION	5101:2-33-21	5101:2-33-21
TRANSMITTAL LETTERS		FCASMTL No. 434

5101:2-33-21

Confidentiality and dissemination of child welfare information.

(A) Each referral, assessment/investigation and provision of services related to reports of child abuse, neglect, dependency, or family in need of services (FINS) is confidential. Information contained in the statewide automated child welfare information system (SACWIS) is confidential pursuant to section 5101.131 of the Revised Code. This information may be shared only when dissemination is authorized by this rule.

(B) If any information is disseminated, the public children services agency (PCSA) shall notify the receiver of the information that all of the following apply:

- (1) The information is confidential and is not subject to disclosure pursuant to section 149.43 or 1347.08 of the Revised Code by the agency to whom the information was disclosed.
- (2) Unauthorized dissemination of the contents of the information is in violation of section 2151.421 of the Revised Code.
- (3) Anyone who permits or encourages unauthorized dissemination of the contents of the information violates section 2151.99 of the Revised Code and such a violation is a misdemeanor of the fourth degree.

(C) The PCSA shall document in SACWIS that the dissemination of information occurred. Documentation shall include a summary of all of the following:

- (1) The specific information disseminated.
- (2) The date the information was disseminated.
- (3) The agency, organization, or individual to whom the information was disseminated.
- (4) The reason for the dissemination of information.
- (5) If required, written authorization to disseminate information pursuant to paragraphs (H) and (R) of this rule.

(D) When any person commits, causes, permits, or encourages unauthorized dissemination of information, the PCSA shall give written notification of such unauthorized dissemination to the county prosecutor or city director of law and the Ohio department of job and family services (ODJFS). A copy of the written notification shall be maintained in the case record.

(E) The PCSA shall not release the identities of the referent/reporter, and any person providing information during the course of an assessment/investigation shall remain

confidential. The identities of these individuals shall not be released or affirmed by the PCSA to any party without the written consent of the individual(s) involved, except to those individuals outlined in paragraph (F) of this rule.

(F) The PCSA shall release child welfare information to the following persons or entities:

- (1) ODJFS staff with supervisory responsibility in the administration of Ohio's child welfare program.
- (2) Law enforcement officials who are investigating a report of child abuse or neglect or that a person violated section 2921.14 of the Revised Code by knowingly making or causing another person to make a false report.
- (3) The county prosecutor who is investigating a report of child abuse or neglect or that a person violated section 2921.14 of the Revised Code by knowingly making or causing another person to make a false report.
- (4) Any PCSA or children services agency (CSA) assessing/investigating a child abuse or neglect report involving a principal of the case.
- (5) The court, for the purpose of the issuance of a subpoena to the referent/reporter.

(G) The PCSA shall promptly disseminate all information determined to be relevant, except as specified in paragraph (E) of this rule, to any federal, state, or local governmental entity, or any agent of such entity, with a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect including but not limited to:

- (1) Law enforcement officials, as set forth in the child abuse and neglect memorandum of understanding, to investigate a PCSA report of child abuse or neglect, a report of a missing child, or a report that a person has violated section 2921.14 of the Revised Code, by knowingly making or causing another person to make a false report of child abuse or neglect.
- (2) The county prosecutor, to provide legal advice or initiate legal action on behalf of an alleged child victim; and to prosecute any person who has violated section 2921.14 of the Revised Code, by knowingly making or causing another person to make a false report of child abuse or neglect.
- (3) A guardian ad litem or court appointed special advocate pursuant to section 2151.281 of the Revised Code and the Ohio rules of superintendence rule 48.
- (4) Any PCSA or CSA as defined in rule 5101:2-1-01 of the Administrative Code, which is currently assessing/investigating a report of child abuse or neglect

involving a principal of the case or providing services to a principal of the case. In an emergency situation, the requested information may be released by telephone to a verified representative of a CSA. The PCSA releasing information will verify the identity, job title and authority/job duties of the CSA representative prior to releasing any information. All of the following information shall be released:

- (a) The name and role of each principal of the case registered in any prior report.
- (b) The date, allegation and disposition of each report or allegation.
- (c) The name and telephone number of the county PCSA that conducted an assessment/investigation or provided services for each report.

(5) A coroner, to assist in the evaluation of a child's death due to alleged child abuse and/or neglect.

(6) Child abuse and neglect multidisciplinary team members, for consultation regarding investigative findings or the development and monitoring of a case plan.

(7) Public service providers working with a parent, guardian, custodian or caretaker or children of the family about whom the information is being provided, including but not limited to:

- (a) Probation officers and caseworkers employed by the court, adult parole authority, rehabilitation and corrections, or the department of youth services.
- (b) Employees of the local county boards of developmental disabilities and employees of the local county boards of alcohol drug addiction and mental health.

(8) A school administrator or designee ~~when a~~for any child in the custody of the PCSA ~~pursuant to rule 5101:2-42-90 of the Administrative Code and the Every Student Succeeds Act of 2015, 20 U.S.C. 6311(g)(1)(E) intends to place a child in a foster home in a county other than the county in which the child resided at the time the child was removed from his home.~~

(9) The licensing and supervising authorities of a public or non-public out-of-home care setting in which child abuse or neglect is alleged to have occurred.

(10) The approving authority of a kinship care setting in which child abuse or neglect is alleged to have occurred.

- (11) Administrators of public out-of-home care settings in which child abuse or neglect is alleged to have occurred including but not limited to:
 - (a) Psychiatric hospitals managed by the Ohio department of mental health.
 - (b) Institutions managed by county courts for unruly or delinquent children.
 - (c) Institutions managed by the Ohio department of youth services.
 - (d) Institutions or programs managed by the Ohio department of developmental disabilities or local boards of developmental disabilities.
- (12) Child abuse citizen review boards upon request.
- (13) A child fatality review board recognized by the Ohio department of health, upon request except when a county prosecutor intends to prosecute or a judge prohibits release according to procedures contained in sections 5153.171, 5153.172 and 5153.173 of the Revised Code.
- (14) A grand jury or court, as ordered.
- (15) A children's advocacy center, as set forth in the PCSA child abuse and neglect memorandum of understanding, to comply with the protocols and procedures for receiving referrals and conducting investigations, to coordinate activities, and to provide services for reports alleging sexual abuse or other types of abuse.
- (16) A CDJFS, for child care licensure pursuant to section 5153.175 of the Revised Code and for joint planning and sharing of information pursuant to rule 5101:2-33-28 of the Administrative Code.

(H) Except as specified in paragraph (E) of this rule or if disclosure would jeopardize a criminal investigation or proceeding, the PCSA shall promptly disseminate all information it determines to be relevant to an individual or agency, with written authorization from the PCSA director or designee, when it is believed to be in the best interest of any of the following:

- (1) An alleged child victim, a child subject of the report, the family, or the caretaker.
- (2) Any child residing within, or participating in an activity conducted by an out-of-home care setting when necessary to protect children in that setting.
- (3) A child who is an alleged perpetrator.

(I) Upon receiving a request for disclosure to the public regarding the findings or information about a case of child abuse or neglect which has resulted in either a child fatality or a near fatality that, as certified by a physician, placed the child in serious or critical condition, the PCSA shall prohibit disclosure of such information if it is determined by the PCSA that any of the following would occur:

- (1) Harm to the child or the child's family.
- (2) Jeopardize a criminal investigation or proceeding.
- (3) Interfere with the protection of those who report child abuse or neglect.

(J) If the PCSA has determined to disclose to the public information pursuant to paragraph (I) of this rule, the PCSA shall provide all of the following:

- (1) The cause of and circumstances regarding the fatality or near fatality.
- (2) The age and gender of the child.
- (3) Information describing and the findings of any previous reports of child abuse or neglect assessment/investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality.
- (4) Any services provided by the PCSA on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.
- (5) Any actions, including but not limited to court filings, removals or implementation of safety plans on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.

(K) Upon request, the PCSA shall promptly disseminate to a mandated reporter, who makes a report of child abuse or neglect, information pursuant to section 2151.421 of the Revised Code.

- (1) Whether the PCSA has initiated an investigation.
- (2) Whether the PCSA is continuing to investigate.
- (3) Whether the PCSA is otherwise involved with the child who is the subject of the report.
- (4) The general status of the health and safety of the child who is the subject of the report.

(5) Whether the report has resulted in the filing of a complaint in juvenile court or of criminal charges in another court.

(L) The PCSA shall promptly disseminate all information it determines to be relevant to the principals of the case, in accordance with Chapter 5101:2-36 of the Administrative Code, to inform them of the following:

(1) Each allegation contained in the report.

(2) All report dispositions resulting from the assessment/investigation.

(3) All case decisions resulting from the alternative response assessment.

(M) The PCSA shall promptly disseminate all information determined to be relevant, except as specified in paragraph (E) of this rule, to all of the following persons or entities:

(1) The non-custodial parent of the alleged child victim or child subject of the report, and children being provided services by the PCSA when the PCSA believes such sharing would be in the best interest of the child.

(2) A physician, for the diagnostic assessment of a child where there is reason to believe the child may be a victim of abuse or neglect.

(3) A private service provider, for diagnostic evaluations of and service provision to the alleged child victim or child subject of the report and his family.

(4) The administrator of a non-public out-of-home care setting in which child abuse or neglect is alleged to have occurred.

(5) A foster, relative and non-relative caregiver, as required by rule 5101:2-42-90 of the Administrative Code.

(6) The superintendent of public instruction, pursuant to section 5153.176 of the Revised Code, when the report involves a person who holds a license issued by the state board of education where the agency has determined that child abuse or neglect occurred and that abuse or neglect is related to the person's duties and responsibilities under the license.

(N) The PCSA shall utilize information outlined in paragraph (O) of this rule obtained from the alleged perpetrator search within SACWIS for the purpose of a background check for any of the following:

(1) Foster care licensure, pursuant to Chapters 5101:2-5 and 5101:2-7 of the Administrative Code.

- (2) An adoption homestudy, pursuant to Chapter 5101:2-48 of the Administrative Code.
- (3) A relative or non-relative caregiver approval for placement, pursuant to rule 5101:2-42-18 of the Administrative Code.

(O) The PCSA shall consider reports that meet the following criteria when the information is being used for a background check in accordance with paragraphs (N) and (G) (16) of this rule:

- (1) Substantiated reports where the subject of the search was the alleged perpetrator.
- (2) Indicated reports where the subject of the search was the alleged perpetrator.

(P) If releasing information pursuant to paragraphs (N) and (G) (16) of this rule, the PCSA shall not release any information pertaining to an unsubstantiated report or an alternative response report.

(Q) The PCSA shall refer any individual who inquires whether his or her name has been placed or remains within SACWIS as the ~~subject of a report of alleged perpetrator of~~ child abuse and/or neglect to ODJFS. An individual may submit a ~~written~~ request to ODJFS. The ~~written~~ request must contain the ~~original signature of the individual who is the subject of the inquiry and the~~ following:

- (1) The individual's full name, including maiden and any other names utilized; address; date of birth and social security number.
- (2) A copy of two of the following forms of identification, with at least one containing the individual's social security number:
 - (a) Social security card.
 - (b) Driver license.
 - (c) State identification card.
 - (d) Birth certificate.
 - (e) Passport or travel visa.
- (3) ~~In lieu of the two copies of the forms of identification required in paragraph (Q) (2) of this rule, an individual may submit a notarized request containing the individual's name, address, date of birth and social security number.~~

(R) At his or her sole discretion, a PCSA director or designee may disseminate information to a researcher in the area of child welfare, if the information is determined to be relevant to the researcher, and the results of the research will be beneficial to the county PCSA in administering child welfare programs/services. Authorization of the dissemination shall be documented. No direct access to SACWIS or any other state of Ohio database shall be requested by or on behalf of, nor approved for or granted to, any researcher pursuant to rule 5101:2-33-70 of the Administrative Code. The PCSA shall disclose only the minimum information needed by the researcher to perform the study, and, prior to disseminating information to any researcher, the PCSA shall require the researcher to sign an agreement which addresses all of the following:

- (1) The researcher shall not disseminate confidential information containing names or data by which any individual or out-of-home care setting could be identified or deductively inferred.
- (2) The PCSA shall review the research prior to its dissemination or publication to ensure that the research is void of names or data by which any individual or out-of-home care setting could be identified or deductively inferred.
- (3) The researcher shall accept liability for unauthorized dissemination of information.

Effective: 8/1/2020

Five Year Review (FYR) Dates: 5/4/2020 and 08/01/2025

CERTIFIED ELECTRONICALLY

Certification

07/20/2020

Date

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