

Kentucky Safe Families in Recovery Desk Reference

You **CAN** share information about substance abuse treatment with the proper procedures...

Do...

- Know that KRS 620.030, 620.040 and 620.050 do NOT supersede 42 CFR
- Talk to treatment providers about how to share information; build positive relationships and agree on forms and processes
- Ask clients to sign consent forms and give copies to the provider
- Share information related to treatment with the provider, such as your child safety assessment findings, case plan, and child placement
- Ask for a hearing and a court order to release information if you cannot obtain a signed consent form

DCBS

Don't...

- Try to get treatment information without a release signed by the client or a special court order—the provider is prohibited from sharing it
- Re-disclose information about substance abuse treatment to anyone outside DCBS without the client's signed consent or a special court order
- Share information from your record with unauthorized people without a signed consent
- Assume that a treatment provider that reports suspected abuse or neglect can then share treatment information during an investigation without a consent form signed by the client

Substance Use Disorder Service Provider

Do...

- Talk with DCBS and the courts about how information can be legally shared with them
- Ask clients to sign a consent form so you can share information impacting child safety with DCBS and the courts such as client sobriety, treatment progress, and relapse (see sample form for essential elements). Consent forms can be written to allow re-disclosure of information by DCBS to the courts, per legal council for CHFS.
- Develop trusting relationships with DCBS and the courts
- Remember that you are a mandatory reporter of suspected child abuse or neglect
- Provide written reports to DCBS and the courts
- Include on all released documents a statement prohibiting re-disclosure without client consent or a court order
- Communicate facts rather than conjecture

Don't...

- Decline to release information without explaining the legal way to release it
- Re-disclose information from DCBS without signed client consent
- Keep information that could impact child safety and that you are legally able to share from DCBS or the courts

The Courts

Do...

- Ask that DCBS and providers obtain releases whenever possible
- If a release cannot be obtained, hold a hearing* with the client and provider to see if there is good cause to order the disclosure of confidential information which outweighs potential injury to the client
- Issue a court order when treatment information is necessary to your decision making and the client has not signed a release
- If necessary, explain to the client the need for a signed release

Don't...

- Use a subpoena to obtain treatment information because only a court order will satisfy 42 CFR*
- Order clients to sign a release form
- Place medical records (including substance use treatment records) in the court file without an order that they be sealed

*see Part II of 42 CFR, Subpart E, Sections 2.62-2.67 for specifics

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What to share across systems...

Releasing information that is not relevant to the treatment or releasing opinions or unsupported evaluative statements are inconsistent with protecting client confidentiality. Keep communication to the facts. From the client perspective, release of information is designed for treatment coordination between provider, court, and child protection service and to inform court and child protection decisions. When sharing between agencies and the courts, specific dates or data are needed with short summaries of the following information:

DCBS

At the time of referral to services, include:

- Name and contact information of caseworker.
- Reason for referral and possible alcohol or other drug issues.
- Screening and assessment results.
- Copies of signed consent forms.
- Drug and alcohol history.
- History of child welfare involvement.
- Household composition and any children previously removed.
- Client identifying information for benefits.
- Custody status of children and visitation schedule.
- List of services provided to the client.

Throughout the case, include:

- Court dates and status of the court case.
- Family Team Meeting dates.
- Child custody status including changes and ongoing visitation plan if appropriate.
- Results of any court or agency-conducted urine screens. Ongoing status related to child.
- Participation in other services and results including investment and attendance.
- Results of assessment of family and parental capacity (North Carolina Family Assessment Scale or other assessment results).
- Visitation schedule with parents and progress or behavioral observations during visitation

Substance Use Disorder Service Provider

At time of assessment, include:

- Treatment provider name and contact information.
- Referral status and results. Assessment summary.
- Diagnoses.
- Level of care determination.
- Drug screen or test results.
- Services that will be provided to the client.

During ongoing treatment, include:

- Progress and attendance in treatment.
- Compliance, including # of drug tests and results. Identification of co-occurring issues.
- Facts and assessment about motivation, compliance, investment in treatment.
- Significant changes.
- Observations of parent/child interactions.
- Discharge status and aftercare plans/needs.
- Any changes in a parent's personal permanency goal.

The Courts

Throughout the case, include:

- Court findings, orders, and forms
- Services suggested or mandated.
- Court expectations of parents.
- Docket sheets.
- Dates of upcoming hearings.



What should go on a release of information form

Remember, you **CAN share information with the proper release!**

Informed consent must be specific on: what information is going to be shared, with whom, and for what purpose. A consent form signed by the parent is probably the most common strategy for facilitating cross-system communication.

Consent forms must include the following:

- Name of program making disclosure
- Name or title of individual or organization that will receive disclosure
- Name of the person who is the subject of disclosure
- Purpose or need for disclosure
- How much and what kind of information will be disclosed (be specific)
- Statement that the person giving consent may revoke (take back) consent at any time, except to the extent that the program has already acted on it
- Date, event, or condition upon which consent will expire, if not previously revoked
- Signature
- Date on which consent is signed

Per CHFS Legal Council, it is allowable for substance abuse treatment providers to include on signed consent forms permission for the information released to DCBS to be re-disclosed to the courts with client permission or pursuant to court order or subject to state or federal law.

Consent forms must be renewed at least annually and signed again by the client. Consent can also be withdrawn at any time by the client without a need to justify such a request or without loss of services to which the client is entitled.

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Federal and State Laws Related to Confidentiality

While there is great need for information sharing among DCBS, Courts, and substance use disorder service providers, all three operate within stringent federal, state and jurisdictional statutes and regulations regarding information sharing. Families have a legal and ethical right to trust that information about them will be handled in a confidential and ethical manner that they are aware of and, where applicable, give consent to disclosures of personal information pertaining to their cases. All of the various regulations and statutes include provisions for information sharing, and formal agreements between agencies and Courts can ensure compliance with confidentiality provisions.

42 Code of Federal Regulation (CFR) Part 2 refers specifically to the confidentiality of information related to treatment for alcohol and other drug abuse. Briefly, the regulation applies strict confidentiality to the identity, diagnosis, prognosis, or treatment of any patient. The information is confidential and to be disclosed or re-disclosed only with the prior written consent of the patient or a valid court order for good cause. Providers may not identify, directly or indirectly, any individual patient or otherwise disclose patient identities in any manner without written consent. Violations of 42 CFR may result in financial or criminal penalties including jail time.

Under the **Health Insurance Portability and Accountability Act (HIPAA)**, an individual's health care information must be used by the Cabinet and its employees and agents only for legitimate health purposes like treatment and payment. HIPAA gives consumers of programs and services the right to an explanation of their privacy rights, the right to see their medical records, the right to request corrections to these records, the right to control the release of information from their records and the right to documented explanations of disclosures by the Cabinet and by others who may have access to this information. Those who violate the rules laid down by HIPAA are subject to federal penalties that include monetary and criminal penalties including prison terms.

Under **Kentucky Revised Statute (KRS) 194A.060 and 194B.060**, all records and reports of the Cabinet which directly or indirectly identify a patient or client, or former patient or client, of the Cabinet are confidential.

Under **KRS 222.271**, treatment records of alcohol and drug abuse patients are confidential.

Under **KRS 210.235**, all records which directly or indirectly identify any patient, former patient, or person for whom hospitalization has been sought, are confidential.

Under **KRS 620.030, 620.040, and 620.050**, The cabinet upon request shall receive from any agency of the state or any other agency, institution, or facility providing services to the child or his or her family, such cooperation, assistance, and information as will enable the cabinet to fulfill its responsibilities. Note: these statutes do not supersede 42 CFR or HIPAA and so a valid release form or court order for cause is required in order to release substance use disorder information.

Under **KRS 610.340**, all juvenile court records are confidential and shall not be disclosed to unauthorized persons unless ordered by a court for good cause.

Kentucky Rules of Evidence 506 (for counselors) and 507 (for psychotherapists) allow for privileged communication between a client and a counselor or psychotherapist with some exceptions, such as a court-order psychological evaluation or if mental status is being used as a claim or defense. With the proper court actions, counselors only may be ordered to release information to the court.