

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER f: GENERAL ADMINISTRATION

PART 431
CONFIDENTIALITY OF PERSONAL INFORMATION OF PERSONS SERVED BY
THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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AUTHORITY: Implementing Section 35.1 of the Children and Family Services Act [20 ILCS 505/35.1], the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110], Sections 11 and 11.1 of the Abused and Neglected Child Reporting Act [325 ILCS 5/11 and 11.1], the AIDS Confidentiality Act [410 ILCS 305], and the Protection and Advocacy for Mentally Ill Persons Act [405 ILCS 45]; and authorized by Section 5 of the Children and Family Services Act [20 ILCS 505/5] and Section 11.1 of the Abused and Neglected Child Reporting Act [325 ILCS 5/11.1].

SOURCE: Adopted and codified at 5 Ill. Reg. 7815, effective August 3, 1981; amended at 6 Ill. Reg. 15517, effective January 1, 1983; amended at 10 Ill. Reg. 21647, effective December 31, 1986; amended at 11 Ill. Reg. 12613, effective August 1, 1987; amended at 13 Ill. Reg. 2407, effective March 1, 1989; amended at 15 Ill. Reg. 24, effective December 31, 1990; recodified at 18 Ill. Reg. 7951; amended at 19 Ill. Reg. 17082, effective December 15, 1995; amended at 23 Ill. Reg. 677, effective January 15, 1999; amended at 27 Ill. Reg. 1130, effective January 15, 2003; amended at 28 Ill. Reg. 317, effective December 31, 2003; amended at 32 Ill. Reg. 7088, effective May 1, 2008; amended at 27 Ill. Reg. 14868, effective August 30, 2013; amended at 39 Ill. Reg. 7253, effective May 7, 2015.

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Section 431.15 Purpose

The purpose of these rules is to specify:

- a) who has access to records which contain personal information about persons served by the Department or about the subjects of a child abuse or neglect report made to and investigated by the Department, and who must consent to release of personal information,
- b) to whom the Department may disclose personal information without prior consent,
- c) under what conditions access to records will be granted or denied by the Department, and
- d) when the DCFS-Office of the Inspector General may impound the records of the Department, its foster parents or relative caregivers, service providers, or contractors.

(Source: Amended at 19 Ill. Reg. 17082, effective December 15, 1995)

Section 431.20 Definitions

"ANCRA" means the Abused and Neglected Child Reporting Act [325 ILCS 5].

"Case record or record" means the record maintained for a family service case, a child service case, or a payment/monitoring-only case, which may include the child abuse/neglect (CA/N) investigative file. The term "case record" applies to records maintained by the Department or a purchase of service agency responsible for case management regardless of whether the services were provided directly by Department staff or purchased from a private provider. The confidentiality of case record information and access to that information may differ, depending on the type of information sought.

"Case transfer" means the conveying of information from one Department region, site or field office to another; from one purchase of service agency to the Department or to another; from the Department to a purchase of service agency. A different worker is assigned when a case is transferred and those activities necessary to transfer case management responsibility for service delivery to a family and/or child from worker to worker or Department office to Department office or Department office to purchase of service agency or purchase of service agency to purchase of service agency are completed. Transfer includes physical delivery of the case record as necessary for service provision.

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody or custody or guardianship via court order, or children whose parents have signed an adoptive surrender or voluntary placement agreement with the Department.

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"Court appointed special advocate" means a person appointed by a court to protect the minor's best interests and insure the proper delivery of child welfare services.

"Disclose" and "permit access to" means to release, transfer, permit examination of, or otherwise communicate information orally, in writing, by electronic means or in any other manner.

"Department" or "DCFS" means the Illinois Department of Children and Family Services.

"HIPAA" means the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191, which amends the Internal Revenue Service Code of 1986 and includes a section on Administrative Simplification requiring the protection of confidentiality and security of health data through setting and enforcing standards that protect the confidentiality and integrity of "individually identifiable health information".

"Impound" means to seize and retain in legal custody during the pendency of an investigation and any disciplinary, civil or criminal actions that result from an investigation conducted pursuant to the authority of the DCFS-Office of the Inspector General.

"Indicated Report" means any report of child abuse or neglect made to the Department for which it is determined, after an investigation, that credible evidence of the alleged abuse or neglect exists.

"Mental health information" means records, reports or other information about the provision of mental health or developmental disability services as defined in the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110].

"Minor" means any individual who has not reached his or her 18th birthday.

"Person served by the Department" or "client" means any person who receives services or applies for services from the Department through its various offices. The term includes children for whom the Department is legally responsible, persons who involuntarily are investigated by the Department concerning allegations of child abuse or neglect and who may receive Department services during the course of, or subsequent to, the investigation, persons who are receiving Department services through an order of the court, and persons who voluntarily request services from the Department.

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"Personal information" means any identifying information, excluding work products, that is a part of the permanent record and that describes, locates or indexes anything about an individual including, but not limited to, education, financial transactions, medical history, criminal or employment records, registration or membership in an organization or activity, or admission to an institution. Personal information may be classified as mental health information, child abuse or neglect information, medical information, or other types of sensitive information and may be governed by different access, consent and disclosure requirements.

"Serious physical injury", for purposes of this Part, includes but is not limited to brain damage, skull fractures, subdural hematomas, internal injuries, wounds, third degree burns, multiple or spiral fractures, poisoning, or physical injury when evidence indicates the child has been tortured.

"State Central Register" means the specialized Department unit that receives and transmits reports of alleged child abuse and neglect.

"Subject of a report" means any child reported to the child abuse/neglect State Central Register and his or her parent, personal guardian or other person responsible for the child's welfare who is named in the report.

"Unfounded report" means any report of child abuse or neglect for which it is determined, after an investigation, that no credible evidence of the alleged abuse or neglect exists.

"Work product", for the purposes of this Part, means a worker's notes that are not part of the permanent record and concern interviewing technique, strategies for working with a person served by the Department and personal observations; these notes are kept for the worker's own personal use and are not disclosed to any other person except the worker's supervisor or attorney.

(Source: Amended at 39 Ill. Reg. 7253, effective May 7, 2015)

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Section 431.30 Maintenance of Records

- a) The Department, through its institutions, facilities and various offices shall maintain a record on all persons receiving services from the Department, either directly or through the purchase of services, and on all persons for whom a child abuse or neglect report has been indicated or unfounded or for whom a decision about the report has not yet been made. Upon request from the subjects of the report, the Department may keep records of unfounded reports of child abuse or neglect to prevent future harassment of the subjects. Additionally, in accordance with ANCRA Section 7.17, the Department may maintain case records containing identifying information related to child abuse or neglect reports.
- b) The retention schedule for indicated, unfounded, undetermined and pending child abuse and neglect records is based on the seriousness of the allegations described in 89 Ill. Adm. Code 300, Appendix B, as follows:

- 1) 50 Years

- All reports where allegations regarding the death of the child subject (Allegation #1/#51) or sexual penetration (Allegation #19) were indicated shall be retained for 50 years after the report was indicated.

- 2) 20 Years

- A) The following allegations involving the serious physical injury, sexual molestation or sexual exploitation of the child subject shall be retained for 20 years.

| | |
|--------|--|
| #2/#52 | Head Injuries |
| #4/#54 | Internal Injuries |
| #5/#55 | Burns/Scalding (third degree burns only) |
| #7/#57 | Wounds |
| #9/#59 | Bone Fractures (Multiple or Spiral Fractures Only) |
| #16 | Torture |
| #18 | Diseases Transmitted Sexually |
| #20 | Sexual Exploitation |
| #21 | Sexual Molestation |
| #81 | Failure to Thrive |
| #83 | Malnutrition |
| #85 | Medical Neglect of Disabled Infants |

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- B) The following allegations may be retained for 20 years depending on the seriousness of the injury.

| | |
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| #6/#56 | Poison/Noxious Substances |
| #9/#59 | Bone Fractures (Other than Multiple or Spiral Fractures) |
| #11/#61 | Cuts, Bruises, Welts, Abrasions and Oral Injuries |
| #12/#62 | Human Bites |
| #13/#63 | Sprains, Dislocations |
| #14 | Tying/Close Confinement |
| #15/#65 | Substance Misuse |
| #75 | Abandonment/Desertion |
| #79 | Medical Neglect |

- C) The following factors shall be used to determine whether to retain any of the allegations in subsection (b)(2)(B) for 20 years:

- i) Extent of the injuries. Are the injuries limited to one spot on the child's body or are there multiple injuries on many parts of the child's body?
- ii) Long-term effects of the injuries. Will the child be left with scars, deformities or permanent disabilities?
- iii) Medical treatment required. Does the child require hospitalization, surgery, emergency medical treatment or other major medical treatment as a result of the injuries?
- iv) Pattern or chronicity of injuries. Is there an ongoing history or pattern of harsh punishment or neglect that resulted in injury? Are there severe injuries at different stages of healing?

- D) If none of the factors in subsection (b)(2)(C) are present, the allegations shall be retained for 5 years.

3) 5 Years

The following indicated allegations shall be retained for 5 years.

| | |
|---------|-------------------------------------|
| #17/#67 | Mental Injury |
| #10/#60 | Substantial Risk of Physical Injury |
| #22 | Substantial Risk of Sexual Injury |
| #74 | Inadequate Supervision |
| #76 | Inadequate Food |
| #77 | Inadequate Shelter |
| #78 | Inadequate Clothing |
| #82 | Environmental Neglect |
| #84 | Lock-Out |

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4) Subsequent Indicated Reports

All subsequent indicated reports involving any of the same subjects or the sibling or offspring shall be maintained after the last report was indicated in accordance with retention periods specified in this Section.

5) Unfounded Allegations

A) All identifying information concerning records of unfounded reports involving the death (Allegation #1/#51), sexual abuse (Allegations #18, #19, #20, #21) or serious physical injury (e.g., Allegations #2/#52, #4/#54, #5/#55, #7/#57, #9/#59) of a child shall be maintained in the State Central Register for 3 years after the date the final finding report is entered. All identifying information about all other unfounded reports shall be retained by the SCR for 12 months after the date the final finding report is entered. Notwithstanding anything in this subsection (b)(5)(A), whenever a subsequent report is received concerning a subject of an existing unfounded report, the unfounded report shall be retained until the new investigation is completed or for 12 months, whichever is later.

B) If the alleged perpetrator or caretaker requests, in writing, within ten days of the date on the SCR-generated notice, that a record of the unfounded report be retained as evidence of false reporting, the SCR computer and hard copy files and the local index shall be maintained. Written requests postmarked more than ten days after the date on the SCR notice and oral requests, that are not confirmed in writing, shall not be honored. The child abuse and neglect investigative file shall also be maintained. SCR will notify the local investigative unit when to destroy records of these unfounded false reports.

6) Pending and Undetermined Reports

Child abuse and neglect reports that are pending or undetermined shall remain in the SCR computer and hard copy files, the local index, and the child abuse and neglect investigative file until a decision is reached.

c) The retention schedule for indicated child abuse and neglect records involving juvenile perpetrators (persons under the age of 18 years) is as follows:

1) If after an investigation, reports are indicated and children between the ages of 10 and 18 are determined to be the perpetrator, reports that carry a 5year retention schedule will be expunged from the State Central Register after 5years or at the perpetrator's twenty-first birthday, whichever is sooner.

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- 2) In the event that the same child between the ages of 10 and 18 is determined to be an indicated perpetrator of another report that requires a 5year retention schedule, the information concerning the previous report(s) and the subsequent report will be maintained at the State Central Register for a period of 5years after the date of the subsequent report or at the perpetrator's twenty-first birthday, whichever is sooner.
 - 3) Reports that carry a 20 or 50 year retention schedule will be expunged from the State Central Register after 5years or at the perpetrator's twenty-third birthday, whichever is sooner.
 - 4) In the event that same child between the ages of 10 and 18 is subsequently determined to be an indicated perpetrator of an allegation carrying a 20 or 50 year retention schedule, the information concerning the previous report(s) and the subsequent report will be maintained at the State Central Register for a period of 5years after the date of the subsequent report or at the perpetrator's twenty-third birthday, whichever is sooner.
- d) All retained records shall be of a confidential nature and shall not be made available to the general public except as provided for in Section 431.85.

(Source: Amended at 39 Ill. Reg. 7253, effective May 7, 2015.)

Section 431.40 Required Consents Prior to Disclosure of Personal Information

- a) Except as allowed in these rules, no personal information obtained concerning a person served by the Department or concerning the subjects of a child abuse or neglect report may be disclosed by the Department without the written consent of that individual, provided that individual has reached 18 years of age or, for mental health information and information regarding birth control services, pregnancy, treatment for sexually transmissible diseases or drug or alcohol abuse, the individual must be 12 years of age.
- b) In the event that the personal information concerns a minor, the written consent of his parent, legal custodian or guardian must be obtained unless the rules in this Part specifically allow for a minor to consent to the release of the requested information.
- c) In the event that the personal information concerns any record kept by a therapist or by an agency in the course of providing mental health or developmental disabilities services to a minor or an adult, consent for release must be obtained in conformity with Sections 804 and 805 of the Mental Health and Developmental Disabilities Confidentiality Act.

(Source: Amended at 19 Ill. Reg. 17082, effective December 15, 1995)

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Section 431.50 Client Access to Records Which Contain Personal Information

- a) Except as provided in this Section, persons served by the Department who have reached 12 years of age shall have full access to all records which contain their personal information, unless access is prohibited specifically by this Part. A parent whose parental rights have not been terminated or a guardian of the person of a minor shall have full access to the personal information contained in the records of said minor, unless access is prohibited specifically or otherwise restricted by this Part.
- b) The Department shall provide access to records within ten working days after the receipt of the request, if practicable. In instances in which the material cannot be easily identified and assembled, the Department will provide the records within a reasonable time. Records shall be viewed in the Department field office, a purchase of service provider office or another location, which will not place an undue hardship on the individual. The Department may require that a representative of the Department be present when the records are viewed to interpret the contents of the records. Individuals may convey the right to view their records by a written statement to an attorney or other person.
- c) Every incidence of release of information to persons outside of the Department shall be recorded in the case record.

(Source: Amended at 19 Ill. Reg. 17082, effective December 15, 1995)

Section 431.55 Redaction

All records that are released shall be redacted in accordance with this Part and applicable laws, including but not limited to the Abused and Neglected Child Reporting Act, the Mental Health and Developmental Disabilities Confidentiality Act, the Alcoholism and Other Drug Abuse and Dependency Act [20 ILCS 301], the Children and Family Services Act [20 ILCS 505], the AIDS Confidentiality Act [410 ILCS 305] and any other applicable law.

(Source: Added at 39 Ill. Reg. 7253, effective May 7, 2015)

Section 431.60 Subject Access to Records of Child Abuse and Neglect Investigations

- a) Subjects, including minor subjects, of reports of suspected abuse or neglect are allowed access to the child abuse/neglect investigative records which have been indicated or unfounded as specified in subsection (b) of this Section. However, no information will be released during the pendency of an investigation before the Department has determined whether the report is indicated or unfounded, except as allowed in Section 300.160 of 89 Ill. Adm. Code 300 (Reports of Child Abuse and Neglect) or for purposes of a fair hearing requested prior to the final determination of indicated or unfounded. In addition, the identity or location of persons reporting or cooperating in such investigations shall not be provided to

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any subject, unless a subject appeals an indicated finding and an administrative law judge determines that the lack of such information would prejudice the appellant's case or violate due process of law principles. In addition, the Department may seek a court order prohibiting the release to the subjects of a report of any information deemed likely to be harmful to them. The circumstances under which the administrative law judge will be allowed to order the disclosure to the appellant of the names of reporters or other persons cooperating in the investigation include, but are not limited to, the following:

- 1) Testimony must have been offered by the appellant that the reporter or collateral witnesses demonstrated bias, motive, reason to fabricate or that the reporter or collateral witnesses have other information relevant to the testimony of the reporter or collateral witness.
 - 2) The appellant must provide the administrative law judge in private with the names of the persons believed to be the reporter or collateral witnesses.
 - 3) The individual presenting the Department's case at the hearing shall then disclose the identity of the persons to the administrative law judge in an in-camera setting.
 - 4) If the reporter or collateral witnesses is the same as the persons named by the appellant, then the identity will be disclosed to the appellant. Otherwise, no disclosure will be made. If the identity of the reporter is disclosed, a written notice shall be sent to the reporter advising of the disclosure of the individual's identity.
- b) Subjects of reports of suspected abuse or neglect are allowed access to the child abuse/neglect investigative records that:
- 1) have been unfounded, provided the subject requests the report within 60 days after receipt of notification that the report was unfounded; or
 - 2) are retained as evidence of false reporting.
- c) The guardian of the person or guardian ad litem of a child who is the subject of a report may have access to the investigative record, as limited in subsection (a) above.

(Source: Amended at 23 Ill. Reg. 677, effective January 15, 1999)

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Section 431.70 Denial of Requests to Access Information

A person shall be denied access to the following material that may be considered personal information.

a) Adoption Records

- 1) The Department may deny a person personal information in situations involving adoption when the information would allow that individual to determine the identity of his parents, siblings, or other relatives; or would allow the individual the opportunity to determine the whereabouts of a child which was voluntarily or involuntarily relinquished for adoption. The Director of the Department may release this information following an evaluation if in the Director's opinion releasing the information is in the best interests of all persons involved in the adoption of the child.
- 2) Parents whose parental rights have been surrendered or legally terminated may indicate in writing whether they would allow their child to have access to their name(s) and information about them at some time in the future. This written statement shall be provided when the child is relinquished for adoption. When the parents have requested that their name(s) and information about them not be released to the child at a later date, their request shall be respected insofar as permissible by state or federal law or regulation. One significant federal law is the Indian Child Welfare Act. Under this law the parent shall be entitled to absolute anonymity in the case of voluntary relinquishment upon request.
- 3) All requests shall be included both in the parents' and child(ren)'s records.

b) Information Accepted under Promise of Confidentiality

Persons shall be denied access to information which will identify the source of any information obtained during a child abuse or neglect investigation (except as permitted in Section 431.60 above for purposes of conducting an administrative hearing), an adoptive investigation, a licensing investigation, or a study in preparation for a dispositional order under the Juvenile Court Act of 1987 if the information was given before or after the effective date of these rules under the express or implied promise that the identity of the information source would be held in confidence.

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c) Information to Locate a Child

An individual may be denied access to information, which would allow that person to determine the physical location of a child who was removed from the individual's custody in accordance with the Juvenile Court Act of 1987. This information shall be denied only if:

- 1) there is reasonable cause to believe that the child, foster parents or others caring for the child will be in danger if the child's whereabouts were known; or
- 2) the individual is likely to remove the child from the jurisdiction of the court.

d) Confidential Information About a Minor

The Department shall not release the following information without the consent of the minor:

- 1) information given to the Department by minors under the Department's assurance of confidentiality; and
- 2) information about a minor's consent to his or her own or his or her children's medical care.

(Source: Amended at 19 Ill. Reg. 17082, effective December 15, 1995)

Section 431.80 Disclosure of Records of Child Abuse and Neglect Investigations

Record information about child abuse and neglect investigations may be shared with the following individuals without the consent of the subjects of the report.

- a) Department staff in the furtherance of their responsibilities under the ANCRA or for the purpose of completing background investigations on persons or agencies licensed by the Department or through whom the Department provides child welfare services, and on court appointed special advocates, or for purposes of an investigation conducted by the DCFS-Office of the Inspector General under Section 35.5 of the Children and Family Services Act. Unfounded reports may be made available to the child protective service unit only when an investigator in the unit is investigating a subsequent report of suspected abuse or neglect involving a subject named in the unfounded report;
- b) Department and purchase of service provider staff assessing children and families in which abuse or neglect has occurred or providing services to these children and families;

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- c) Department staff verifying whether a child care facility subject to Department licensing is owned or operated by known perpetrators of child abuse or neglect or whether members of the household of a family home in which a child care facility operates, or employees or volunteers who have access to children have been found to be the perpetrators of child abuse or neglect;
- d) Law enforcement officers investigating a report of suspected child abuse or neglect, known or suspected involvement with child pornography, known or suspected criminal sexual assault, known or suspected criminal sexual abuse, or any other sexual offense when children are alleged to be involved;
- e) *The Department of State Police when administering the provisions of the Intergovernmental Missing Child Recovery Act of 1984 [325 ILCS 5/11.1(a)(30)];*
- f) State's Attorneys who need access to child abuse or neglect information in the course of their assigned duties;
- g) Physicians examining a child where abuse or neglect is suspected;
- h) A court, upon its finding that access is necessary to determine an issue before the court. Unless the court determines that disclosure of the information in open court is necessary, this access is limited to an inspection by the judge in his or her chambers or in a courtroom free of spectators.
- i) A grand jury that determines that access is necessary to conduct its official business;
- j) Persons who have been authorized by the Director, in writing, to review the records for audit or research purposes or to review the records in the regular course of the Department's business. This access shall be time limited or limited to specific staff functions;
- k) Persons authorized to take temporary protective custody if the information is needed to determine whether to take the child into temporary protective custody;
- l) A person who has legal responsibility or authorization to care for, treat, or supervise a child or a parent, foster parent, guardian, or other person responsible for the welfare of a child who is the subject of a report;
- m) Federal, state, or local law enforcement officers, coroners or medical examiners, physicians, courts, school superintendents and child welfare agencies in other states who are responsible for child abuse or neglect investigations or background investigations. This information shall be requested only for the purpose of aiding the investigation, assessment or service provision or background investigation in the requesting state;

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- n) The Illinois Department of Financial and Professional Regulation, when determining whether a mandated reporter (as detailed in ANCRA Section 4) who failed to report child abuse or neglect should be subject to license suspension or revocation, or when determining whether to refuse to issue, suspend or revoke a State-issued license due to the person having been named a perpetrator in an indicated report of child abuse or neglect;
- o) School superintendents and the State Board of Education when determining whether a teacher's certificate shall be suspended because the teacher has been named as a perpetrator in an indicated report of child abuse or neglect;
- p) *A coroner or medical examiner who has reason to believe that a child has died as the result of abuse or neglect [325 ILCS 5/11.1(a)(13)];*
- q) *The Director of a state-operated facility when an employee of that facility has been named as a perpetrator of an indicated report [325 ILCS 5/11.1(a)(14)];*
- r) *Members of a multidisciplinary team in the furtherance of its responsibilities under this Act [325 ILCS 5/11.1(a)(16)];*
- s) The operator of a licensed child care facility or a facility licensed by the Department of Human Services in which children reside when a current or prospective employee of that facility has been named as a perpetrator in an indicated child abuse or neglect report;
- t) *A probation officer or other authorized representative of a probation or court services department conducting an investigation ordered by a court under the Juvenile Court Act of 1987 [325 ILCS 5/11.1(a)(8.1)];*
- u) *The Department of Human Services, as provided in Section 17 of the Disabled Person's Rehabilitation Act [325 ILCS 5/11.1(a)(17)];*
- v) *Any other agency or investigative body, including the Department of Public Health and a local board of health, authorized by State law to conduct an investigation into the quality of care provided to children in hospitals and other State regulated care facilities. The access to and release of information from child abuse records shall be subject to the approval of the Director of the Department or his or her designee [325 ILCS 5/11.1(a)(18)];*
- w) *The Department of Human Services, as provided in Section 10 of the Early Intervention Services System Act [325 ILCS 20], and the operator of a facility providing early intervention services pursuant to that Act, for the purpose of determining whether a current or prospective employee who provides or may provide direct services under that Act is the perpetrator in an indicated report of child abuse or neglect filed under ANCRA [325 ILCS 5/11.1(a)(20)];*

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- x) *The guardian ad litem of a minor who is the subject of a report or records under ANCRA [325 ILCS 5/11.1(a)(19)];*
- y) *Child death review teams in accordance with 89 Ill. Adm. Code 300 (Reports of Child Abuse and Neglect), Section 300.165;*
- z) *The general public as specified in Section 431.85; or*
- aa) *The state's attorney, law enforcement, courtroom personnel or treatment providers when that information pertains to juveniles subject to the provisions of the Serious Habitual Offender Comprehensive Action Program [705 ILCS 405/5-145] and is used to assist in the early identification and treatment of habitual juvenile offenders.*

(Source: Amended at 39 Ill. Reg. 7253, effective May 7, 2015)

Section 431.85 Public Disclosure of Information Regarding the Abuse or Neglect of a Child

- a) *The Director or designee may disclose to the public information regarding the abuse or neglect of a child, if he or she determines that such disclosure is not contrary to the best interests of the child, the child's siblings, or other children in the household, provided one of the following factors is present:*
 - 1) *the subject of the report has been criminally charged with committing a crime related to the child abuse or neglect report; or*
 - 2) *a law enforcement agency or official, a State's Attorney, or a judge of the State court system has publicly disclosed in a report, as part of his or her official duty, information regarding the investigation of a report or the provision of services by the Department; or*
 - 3) *an adult subject of the report has knowingly and voluntarily made a public disclosure concerning a Child Abuse and Neglect Tracking System (CANTS) report; or*
 - 4) *the child named in the report has been critically injured or has died.*
- b) *The following information may be disclosed:*
 - 1) *the name of the alleged abused or neglected child;*
 - 2) *the current status of the investigation, including whether a determination of credible evidence has been made;*
 - 3) *identification of child protective or other services provided or actions taken regarding the child named in the report and the child's family as a result of the report;*

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- 4) *whether there have been past reports of child abuse or neglect involving this child or family, or both. Any such reports shall be clearly identified as being “Indicated”, “Unfounded”, or “Pending”.*
- 5) *whether the Department has a current or past open service case with the family, and a history of what types of services have been, or are being, provided;*
- 6) *any extraordinary or pertinent information concerning the circumstances of the report, if the Director determines such disclosure is consistent with the public interest.*
- c) *Any disclosure of information pursuant to this Section shall not identify the name of or provide identifying information regarding the source of the report.*
- d) *In determining whether disclosure will be contrary to the best interests of the child, the child’s siblings, or other children in the household, the Director shall consider the interest in privacy of the child and the child’s family and the effects that disclosure may have on efforts to reunite and provide services to the family.*
- e) *Except as it applies directly to the cause of the abuse or neglect of the child, nothing in this Section shall be deemed to authorize the release or disclosure of the substance or content of any psychological, psychiatric, therapeutic, clinical, or medical reports, evaluations, or like materials pertaining to the child or the child’s family. Prior to the release or disclosure of any psychological, psychiatric, or therapeutic reports pursuant to this subsection, the Deputy Director of Clinical Services shall review such materials and make recommendations regarding its release. Any disclosure of information pursuant to this Section shall not identify the health care provider, health care facility or other maker of the report or source of any psychological, psychiatric, therapeutic, clinical, or medical reports, evaluations, or like materials.*
- f) *Regarding child abuse or neglect reports which occur at a facility licensed by the Department, only the following information may be disclosed or released:*
 - 1) *the name of the facility;*
 - 2) *the nature of the allegations of abuse or neglect;*
 - 3) *the number and ages of the child victims involved, and their relationship to the perpetrator;*
 - 4) *actions the Department has taken to ensure the safety of the children during and subsequent to the investigation;*
 - 5) *the final finding status of the investigation. [325 ILCS 5/11.1a]*

(Source: Added at 23 Ill. Reg. 677, effective January 15, 1999)

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Section 431.90 Disclosure of Personal Information Without Consent

a) **Persons Who May Receive Personal Information Without Consent**

The Department shall disclose personal information to the following persons or category of persons without the consent of the individual only in accordance with the provisions of the Children and Family Services Act, Mental Health and Developmental Disabilities Confidentiality Act, the AIDS Confidentiality Act, or ANCRA, as applicable to the type of information being requested:

1) **Law Enforcement Officers**

- A) Department child welfare staff, with approval of the immediate supervisor, shall release personal information to State's Attorneys, the Attorney General, municipal and sheriff's police (in Illinois or other jurisdictions), and the Department of State Police, when releasing the information is consistent with the best interests of the child or when the information is relevant to a pending investigation.
- B) If personal information is requested by law enforcement officers other than listed in subsection (a)(1)(A), or if the information requested is not consistent with the best interests of the child served by the Department, the information may be released only by the Director of the Department or his or her designee.

2) **Persons Who Have Subpoenas or Other Court Orders**

- A) The Department shall disclose personal information when ordered to do so by a court order. The Department shall make a good faith effort to notify the person whose records are the subject of the order that the order exists and the nature of the proceedings, unless specifically ordered by the court to not contact the subjects. The Department shall notify the court or the person obtaining the court order of the confidential nature of the information and its policies regarding personal information. In addition, the Department may take any appropriate legal actions to limit or quash the court order.
- B) In the event a subpoena has been issued by a court, the Department shall make a good faith effort to contact the subject of the order as explained in subsection (a)(2)(A). If a subpoena is issued by a Clerk of the Court without any judicial involvement, the Department shall notify the person who had the subpoena issued of its policies regarding personal information and shall make a good faith effort to promptly notify the person whose information is the subject of the subpoena. The Department shall not release the information for 14 days following the receipt of the subpoena

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unless the person consents to the release of the records or an earlier, reasonable return date is provided in the subpoena. After 14 days have passed from the receipt of the subpoena, the Department shall release the information if releasing it is consistent with the best interests of the child.

- C) When a person served by the Department is engaged in litigation against the Department, the Department shall release personal information concerning that individual or his or her children that is subject to discovery under the laws of the State of Illinois.
- D) DCFS shall provide records to a court, other than juvenile court, party to a lawsuit or a party's attorney only after the Regional Counsel has reviewed the subpoena, request or order from the court and redacted confidential mental health, drug treatment and Human Immunodeficiency Virus (HIV)/Acquired Immunodeficiency Syndrome (AIDS) information and other records strictly protected by statute. The Department shall request that a protective order be entered if the court orders the release of confidential information.

3) Legislators

Only the Director of the Department shall authorize the release of the contents of case records to the Illinois legislature or its committees or commissions. Individual legislators shall not have access to case records unless they are acting under the authority given them by the law.

4) Professionals or Other Service Providers

Persons receiving services from the Department or its contractual agencies are to be informed that personal information (other than mental health information) may be shared without their consent with other service providers when it is necessary for the proper provision of services or the establishment of paternity or support for a dependent minor.

- A) With the exception of mental health records, as provided for in Section 431.100, personal information may be released by Department employees acting within their official capacity to professionals who are providing services to persons served by the Department. These professionals may include psychiatrists, psychologists, physicians, social workers, homemakers, contractors with the Department, social service agencies, foster parents, child care facilities and others providing services to persons served by the Department when the information is necessary for the proper delivery of services to the persons served by the Department.

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- B) The Department, in releasing personal information, will limit the information released to that which is necessary to properly provide the service. The persons receiving the information shall be notified by the Department that the information is confidential and that the information is not to be further released except as is necessary for the proper delivery of service.
 - C) Department employees may release personal information needed to establish paternity or support for a dependent child or relative.
- 5) Prospective Adoptive Parents, Foster Parents and Other Caregivers
- A) Prospective adoptive parents, foster parents and caregivers in other licensed child care facilities may review documents and reports in the child's case record that support the information the caseworker provided at the time of the child's placement, or information that has been received or generated regarding the child since placement.
 - B) The information that will be available to caregivers for review will be limited to that which relates directly to a child in that person's care, specifically education records, health and insurance records, history of placements and reasons for changes (excluding identifying information about former caregivers), the child's portion of the client service plan including visitation arrangements and all amendments and revisions relating to the child, and any known social or behavioral information including but not limited to criminal background of the child, fire setting, perpetration of sexual abuse, destructive behavior and substance abuse. Personal information about the child's parents, siblings, relatives, previous caregivers or other individuals such as members of the household in a child's previous living arrangement shall be removed or redacted from the case record prior to the caregiver's review.
 - C) The caregiver's review of the case record shall occur in the presence of casework staff. Once a caregiver has requested a review of a child's file, the Department or agency shall provide the opportunity to do so timely, without undue delay.
 - D) The supervisor shall examine the redacted record for accuracy and approve its review by the prospective adoptive parents, parents, foster parents or caregivers in other licensed facilities prior to the time the records are examined by the caregiver.

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6) Court Appointed Special Advocates

Court appointed special advocates may attend the child's portion of administrative case reviews involving children for whom they are appointed as advocates and may review documents directly related to delivery of child welfare services that are in the best interests of the minor. However, court appointed special advocates are not allowed access to mental health or drug or alcohol assessment and treatment records, confidential medical records, or records of child abuse or neglect reports and investigations and may attend the parent's portion of the administrative case review only with the permission of the parents or their authorized representative.

7) Research Purposes

The release of personal information for research purposes to any source outside the agency shall only be allowed within the discretion of the Director of the Department or designee upon express written consent. The researcher shall ensure, in writing, the confidentiality of identifying information. The researcher shall not release any identifying information without the express written permission of the Director.

8) DCFS-Office of the Inspector General

Personal information shall be released to the DCFS-Office of the Inspector General when the records are pertinent to an investigation authorized under Section 35.5 of the Children and Family Services Act and involves allegations or incidents of possible misconduct, misfeasance, malfeasance, or violations of rules, procedures, or laws.

9) DCFS and Purchase of Service Agency (POS) Staff

Department and POS staff shall have access to child abuse and neglect and other case record information in the furtherance of their responsibilities under the Abused and Neglected Child Reporting Act, the Child Care Act, the Children and Family Services Act, the Juvenile Court Act and any other Act that governs child welfare. Any sharing of information between divisions of the Department or between the Department and purchase of service providers, or between purchase of service providers as necessary for case management is a transfer and not a disclosure of information.

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10) Extended Family

An extended family member interviewed for relevant information during the course of an investigation by the Child Protective Service Unit may request and receive the following information about the findings and actions taken by the Child Protective Service Unit to ensure the safety of the child or children who were the subjects of the investigation:

- A) name of the child who was the subject of the abuse or neglect report;
- B) whether the report was indicated or unfounded;
- C) whether the Department took protective custody;
- D) whether a Department case has been opened for the family or children;
- E) what Department services are being provided the family or children; and
- F) whether a safety plan has been established.

11) State's Attorneys

State's Attorneys shall have access to child abuse or neglect and/or case record information when necessary for the discharge of their official duties during the investigation and prosecution of the abuse or neglect of a child or termination of parental rights pursuant to the Criminal Code of 2012 [720 ILCS 5] or another penal statute, the Juvenile Court Act of 1987 [705 ILCS 405], the Child Care Act of 1969 [225 ILCS 5] or ANCRA.

12) Protection and Advocacy for Mentally Ill Persons

Personal information, with the exception of mental health information, may be released to the agency designated by the Governor for administering the protection and advocacy system for mentally ill persons, in accordance with the provisions of the Protection and Advocacy for Mentally Ill Persons Act [405 ILCS 45].

13) Mandated Reporters

A mandated reporter is allowed to *receive appropriate information about the findings and actions taken by the Child Protective Service Unit in response to his/her report. The information shall include the actions taken by the Child Protective Service Unit to ensure a child's safety.* [325 ILCS 5/11.2]

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14) Others Not Cited in this Section

Personal information may be released for the purposes and to persons other than those listed in this Section upon the written authorization of the Director when that authorization is not prohibited by State or federal law, regulation or rule.

b) Law Enforcement Agencies Data System (LEADS) Information in Child Protection Records

- 1) In accordance with Section 2605-315 of the Civil Administrative Code of Illinois [20 ILCS 2605/2605-315], the Department of Children and Family Services shall have access to LEADS information and underlying *criminal history record information as defined in the Illinois Uniform Conviction Act when necessary for the Department to perform its duties under the Abused and Neglected Child Reporting Act, the Child Care Act of 1969 and the Children and Family Services Act.* [20 ILCS 2605/2605-315]
- 2) LEADS printouts may not be shared outside the Department. Summaries of criminal history information included in the child protection investigation file may be forwarded to the child welfare worker as part of the investigative file. Child protection investigators and child welfare workers shall share underlying public documents on a “need to know” basis with other persons providing services when it is relevant to child protection or service decisions to be made on behalf of the child or family. (See Section 35.1 of the Child and Family Services Act.)

c) Responses to Requests for Information

- 1) Written Requests
 - A) The Department shall accept written requests for the disclosure of personal information without the consent of the concerned individuals only when the requestor has provided a notary public's attestation as to his or her identity and has included the names of the individuals about whom the information is requested. Information shall only be released in compliance with this Part.
 - B) The Department will provide a written response to each written request via certified mail deliverable only to the requestor.

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2) Telephone Requests

- A) The Department shall accept telephone requests for child abuse and neglect information only when the request comes from Department staff investigating a report of child abuse or neglect, law enforcement officials investigating a report of child abuse or neglect or determining whether a child should be taken into temporary child protective custody, physicians examining a child and the information is needed to determine whether a child is abused or neglected or to determine whether a child should be taken into temporary protective custody, and out-of-state agencies involved in a child abuse or neglect report.
- B) The Department shall accept telephone requests for other personal information without the consent of the concerned individuals only if the requesting person or agency is authorized by this Part to receive the information that they are requesting.
- C) The Department shall not provide information to unknown requestors at the time of the initial inquiry. Instead, Department staff shall obtain the requestor's name, type of business, an official business phone number through which his or her identity and authority to receive the information can be verified, and the phone number at his or her current location. The Department shall verify the requestor's identity and authority to receive the information by checking an official telephone listing or checking with a third party at the business office.

3) In-Person Requests

- A) The Department shall accept in-person requests for the disclosure of personal information without the consent of the concerned individuals only when the requestors produce positive identification and proof of their legal authority to receive the requested information.
- B) The Department will recognize only those guardians, custodians, court appointed special advocates or guardians ad litem who produce a court order appointing them to their positions. The Department will recognize only those attorneys or personal representatives who produce a written consent to release the requested information. The consent must be signed by the concerned individual and it must be notarized.

(Source: Amended at 39 Ill. Reg. 7253, effective May 7, 2015.)

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Section 431.100 Disclosure of Mental Health and Developmental Disabilities Information

Release of and access to clinical, social work, psychological, psychiatric or other information of a mental health nature shall be governed by Section 4 of the Mental Health and Developmental Disabilities Confidentiality Act. Significant portions of that Act are as follows:

- a) *The following persons shall be entitled, upon request, to inspect and copy a recipient's record or any part thereof:*
 - 1) *the parent or guardian of a recipient who is under 12 years of age;*
 - 2) *the recipient if he or she is 12 years of age or older;*
 - 3) *the parent or guardian of a recipient who is at least 12 but under 18 years, if the recipient is informed and does not object or if the therapist does not find that there are compelling reasons for denying such access. The parent or guardian who is denied access by either the recipient or the therapist may petition a court for access to the record;*
 - 4) *the guardian of a recipient who is 18 years or older; or*
 - 5) *an attorney or guardian ad litem who represents a minor 12 years of age or older in any judicial or administrative proceeding, provided that the court or administrative hearing officer has entered an order granting the attorney this right.[740 ILCS 110/4]*
- b) Except as otherwise provided in the Mental Health and Developmental Disabilities Confidentiality Act, records and communications as defined in that Act may be disclosed only with the written consent of the persons identified in subsection (a).
- c) Information disclosed with the written consent of those described in subsection (a) may not be redisclosed to any other person without the express written consent of those described in subsection (a). Those persons authorized to give consent may revoke their consent at any time.
- d) When the Department has legal guardianship of a child under 12 years, the Department may deny access of the biological parents to information pertaining to the child's mental health only if two professional social workers (Master of Social Work degree) employed by the Department certify in writing that denial of access is in the best interests of the child and/or parents.
- e) Mental health information can be shared within the Department and purchase of service providers, with traditional and home of relative foster parents, and adoptive parents, when relevant to the Department's discharge of its duties under the Child and Family Services Act, Adoption Act or Abused [750 ILCS 50] and ANCRA.
- f) Mental health information can be shared with a juvenile court judge, guardian ad litem or State's Attorney in an abuse or neglect temporary custody hearing, adjudicatory hearing, dispositional hearing or termination of parental rights hearing when the information is relevant to the juvenile court proceeding.

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- g) During a child abuse and neglect investigation, mental health and developmental disabilities records can be released to the Department pursuant to the Illinois Mental Health and Developmental Disabilities Confidentiality Act.
- h) Mental health records can be released to the Department's Inspector General when:
 - 1) *the recipient was either:*
 - A) *a parent, foster parent or caretaker who is an alleged perpetrator of abuse or neglect or the subject of a dependency investigation; or*
 - B) *a non-ward victim of alleged abuse or neglect; and*
 - 2) *available information demonstrates that the mental health of the recipient was or should have been an issue to the safety of the child. [740 ILCS 110/9(5)]*
- i) The parent or guardian of a recipient who is at least 12 but under 18 years can request and receive, consistent with Section 4 of the Consent by Minors to Medical Procedures Act [410 ILCS 210], the following information: current physical and mental condition, diagnosis, treatment needs, services provided, and services needed, including medication, if any.
- j) Consistent with Section 4 of the Consent by Minors to Medical Procedures Act, the therapist of a minor age 12-18 can release the records if he or she believes it to be in the best interest of the minor. The therapist must notify the minor that the information was released.
- k) Anyone receiving a mental health record or information from a mental health record does not have the legal authority to disclose the information unless the re-release of information is specifically consented to by the client or otherwise permitted by this Section. Sharing of information between divisions of the Department or between the Department and purchase of service providers or between purchase of service providers as required for case management is a transfer and not a disclosure of information.
- l) Persons are entitled to review their own mental health records. Any competent adult recipient may consent to release of mental health records on the prescribed written form.

(Source: Amended at 39 Ill. Reg. 7253, effective May 7, 2015)

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Section 431.105 Disclosure of Alcoholism and Other Drug Abuse Records

Records of the identity, diagnosis, prognosis or treatment of any patient maintained in connection with the performance of any program or activity related to alcohol or other drug abuse or dependency education, early intervention, intervention, training, treatment or rehabilitation that is regulated, authorized or directly or indirectly assisted by any Department or agency of this State or under any provision of the Alcoholism and Other Drug Abuse and Dependency Act shall be confidential and may be disclosed only with consent. The following are exempt from federal confidentiality provisions and can be disclosed without consent:

- a) *Veteran's Administration records;*
- b) *Information obtained by the Armed Forces;*
- c) *Information given to qualified service organizations;*
- d) *Communications within a program or between a program and an entity having direct administrative control over that program;*
- e) *Information given to law enforcement personnel investigating a patient's commission of a crime on the program premises or against program personnel; and*
- f) *Reports under State law of incidents of suspected child abuse and neglect; however, confidentiality restrictions continue to apply to the records and any follow-up information for disclosure and use in civil or criminal proceedings arising from the report of suspected abuse or neglect. [20 ILCS 301/30-5]*

AGENCY NOTE: Statements of observation of a person's demeanor or behavior that suggest they are under the influence of alcohol or a controlled substance are not protected.

(Source: Added at 39 Ill. Reg. 7253, effective May 7, 2015)

Section 431.110 Disclosure of Physical Health Information

- a) **Health Information Portability and Accountability Act (HIPAA)**
 - 1) HIPAA regulations (45 CFR 164.512(b)(1)(ii)) specifically permit use or disclosure of protected health information with a public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect. DCFS is a government authority authorized by law to receive reports of child abuse or neglect.
 - 2) In addition, HIPAA allows the release of personal health information to an individual's personal representative. Included in the definition of personal representative is a guardian or person acting in loco parentis with legal authority to make health care decisions on behalf of a minor child. When conflicts arise between HIPAA and other confidentiality rules, the stricter requirements apply.

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- 3) The Medical Patient Rights Act establishes the right of each patient to privacy and confidentiality in health care. Physical health information may be disclosed when relevant to a child protection investigation. The Children and Family Services Act permits any individual dealing with or providing services to a minor ward to share information with another individual dealing with or providing services to the minor for the purpose of coordination efforts on behalf of the minor. However, the Department shall not release information concerning any medical care to which the minor has the right of consent. (See the Consent by Minors to Medical Procedures Act [410 ILCS 210] for specifics on when a minor has the right to consent to his or her own medical care.)
 - 4) If Department, POS or HealthWorks (see subsection (a)(3)) staff experience difficulty in obtaining information to which the Department has a right from healthcare providers who are citing HIPAA as the reason to deny information, staff shall consult with their supervisor. The supervisor will consult with the Office of the DCFS Guardian if the problem persists.
- b) Disclosure of Information Regarding Acquired Immunodeficiency Syndrome (AIDS)
- 1) The Department shall be informed of the results of Human Immunodeficiency Virus (HIV) tests performed on and of all diagnoses of Acquired Immunodeficiency Syndrome (AIDS), as defined in the Department of Public Health's rules at 77 Ill. Adm. Code 697 (AIDS Confidentiality and Testing Code), for children for whom the Department is legally responsible.
 - 2) The Department shall release information on children for whom it is legally responsible regarding HIV test results and diagnoses of AIDS to the child's legal parents and to persons who have the need to know this information. The categories of persons who have a need to know this information about a child may include, but are not limited to, the following:
 - A) those persons who supervise or provide direct care to the child, such as:
 - i) foster parents;
 - ii) relative caretakers;

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- iii) directors or operators of child care facilities, such as group homes, child care institutions, child welfare agencies, State operated facilities, day care homes, day care centers and the personnel of these facilities who provide direct care for a child by feeding, diapering or handling blood or bodily fluids or who provide direct care to a child who bites, spits, has a bleeding problem such as nose bleeds or hemophilia or who cannot control normal bodily functions;
 - B) physicians, nurses, dentists and other medical providers who will be providing direct care to the child;
 - C) other persons who provide direct care for a child for whom the information is necessary in order to provide Department approved services for the child, i.e., advocates and counselors;
 - D) prospective adoptive parents who have been licensed under 89 Ill. Adm. Code 402, who are willing to adopt a child with a terminal illness, and who have demonstrated an interest in a specific child who has tested positive for HIV infection or who has been diagnosed with ARC or AIDS;
 - E) Guardian ad litem.
- 3) Persons to whom the Department has released information regarding HIV test results and diagnoses of AIDS shall keep this information confidential in accordance with the provisions of the AIDS Confidentiality Act and the AIDS Confidentiality and Testing Code. The information shall not be disclosed to other persons except as authorized by the Department in accordance with subsection (b). The authorization shall be signed by the Department's Guardianship Administrator or designee as defined by 89 Ill. Adm. Code 327.2 and shall contain the names and respective positions of those individuals to whom the information will be disclosed. Education must accompany disclosure so that those persons receiving the information understand the HIV/AIDS diagnosis, treatment and precautions. This information may be provided by the DCFS AIDS Project or a Department Regional Nurse.

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d) HealthWorks

HealthWorks is not a covered function as defined in HIPAA regulations (45 CFR 164.103). HealthWorks functions to fulfill a legally mandated role to arrange for health care services for clients who are in protective custody or are wards of the Department. HealthWorks lead agencies and their medical case management agencies are authorized to receive medical information on children in protective custody or for children who are DCFS wards. HealthWorks staff may use consents signed by the Guardianship Administrator or an authorized agent to obtain information from health providers.

e) Disclosing Information for Regulatory Review Purposes

Under HIPAA, covered entities may disclose protected health information for health oversight activities required by law. The Department's health oversight activities include State-run compliance reviews such as Medicaid Part 132 reviews, Agency Performance Team reviews, Independent Utilization Reviews, and Licensing reviews. Health oversight activities include a broad range of civil, administrative and criminal investigations or proceedings.

(Source: Amended at 39 Ill. Reg. 7253, effective May 7, 2015)

Section 431.120 Removal of Records Prohibited

Records of the Department may not be removed from Departmental facilities by non-Department staff, except as provided in Section 431.130, but may be photocopied. The Department may charge for the cost of reproducing said records at the rate established in 2 Ill. Adm. Code 775 (Public Information, Rulemaking, and Organization).

(Source: Amended at 39 Ill. Reg. 7253, effective May 7, 2015)

**Section 431.130 Impoundment of Records by the Office of the Inspector General
(Repealed)**

(Source: Repealed at 27 Ill. Reg., effective December 31, 2003)

Section 431.140 Applicability of This Part

This Part shall apply to personal information contained in all closed, active and future records of the Department, regardless of whether they are maintained in written, microfilm or electronic (digital) storage.

(Source: Amended at 39 Ill. Reg. 7253, effective May 7, 2015)

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DEPARTMENT OF CHILDREN AND FAMILY SERVICES

POLICY GUIDE 2017.09

Rules 383/ Rules 402/ Rules 431

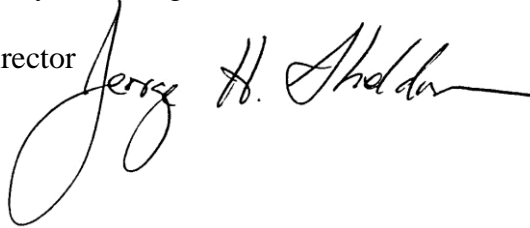
QUALITY OF CARE CONCERNS APPLICANT

DATE: June 14, 2017

TO: DCFS and Private Agency Licensing Staff

FROM: George H. Sheldon, Director

EFFECTIVE: Immediately



I. PURPOSE

This purpose of this Policy Guide is to inform staff of several amendments in Illinois law affecting foster care licensing practice made in **Public Act 099-779**. In the coming months DCFS will propose amendments to **Rules 383, Licensing Enforcement; Rules 402, Licensing Standards for Foster Family Homes; and Rules 431, Confidentiality of Personal Information of Persons Served by the Department**.

II. PRIMARY USERS

The primary users of this Policy Guide are Department and POS licensing staff who provide foster care licensing services as well as foster parents and ancillary staff who are involved with providing supports and training to foster parents.

III. SUMMARY OF LEGISLATIVE CHANGES

Public Act 099-779, effective January 1, 2017, amended Section 35.1 of the Children and Family Service Act, Sections (4), (6) and (7) of the Child Care Act of 1969 as amended and adds Section 2.22 (a) to the Child Care Act of 1969.

IV. RELEASE OF LICENSING RECORDS TO GUARDIAN AD LITEM (GAL) or ATTORNEY

Upon written request of the Guardian Ad Litem (GAL), or attorney appointed to represent a youth in care, pursuant to Article II of the Juvenile Court Act of 1987 the requested information in a licensing record shall be submitted to the GAL or attorney, including licensing complaints and investigations regarding a foster home in which the youth is placed or in which the Department plans to place the youth. Information that cannot be disclosed per state or federal law shall be redacted, prior to submission to the requesting GAL or attorney appointed to represent the youth in care.



The Guardian Ad Litem or attorney appointed to represent a youth in care may make a written request for licensing records of the child's caregiver or past caregivers or a future caregiver with whom DCFS plans to place the child. Written requests for records are to be sent to: the A&I Licensing Supervisor for POS Agencies or the Licensing Unit for DCFS. The Department shall have up to 15 business days or sooner to provide the licensing file, or specific information in the licensing file, to the Guardian Ad Litem or attorney. Information to be redacted in a licensing file shall include the list of information on the **CFS 600-3C, Redaction Checklist for Investigative Files Involving Department Youth in Care Represented by the Cook County Public Guardian**. The **CFS 600-3C** also includes the legislation from which these disclosures are prohibited.

V. QUALITY OF CARE CONCERNS APPLICANT

A Quality of Care Concerns Applicant is an applicant for a foster care license or renewal of a foster care license where the applicant or any person living in the applicant's household has had a license:

- A. Revoked or refused to renew
- B. Surrendered for cause
- C. Expired or surrendered while either an abuse or neglect investigation or licensing investigation was pending or an involuntary hold was placed on the home.
- D. the applicant has been the subject of allegations of abuse or neglect
- E. Has an indicated report of abuse or neglect
- F. Has been the subject of involuntary holds that were placed on the home for the health, safety and well-being of a child or children in care
- G. Has been involved in substantiated licensing complaints which were not corrected and resulted in enforcement action against the facility license

A Quality of Care Concerns Applicant must submit a preliminary application if the license has been:

- 1. Revoked or refused to renew,
- 2. Surrendered for cause, or
- 3. Expired or surrendered when certain types of placement holds were in effect or during a pending licensing or child abuse or neglect investigation was pending.

The foster home may not reapply for a license before the expiration of 5 years following the Department's action or following the expiration or surrender of the license.

VI. PRELIMINARY APPLICATION FOR QUALITY OF CARE CONCERNS APPLICANT

A. Preliminary Application for Licensure

Individuals meeting the definition of Quality of Care Concerns Applicant must submit a **CFS-597-1, Preliminary Application for Licensure**. The preliminary application must include:

- A list of all youth in care fostered in their home that were subsequently removed from their home due to other outcomes than a return home to a parent or legal guardian. Also required are the circumstances that led to their removal.
- A list of all youth currently under 18 years of age who were in their care as foster children and were subsequently provided permanency in the home as an adopted youth or a youth for whom they received legal guardianship, but no longer reside in the home. The assessment requires that the reasons why the child or children are no longer residing in the home.

If the Quality of Care Concerns Applicant chooses to they may also submit:

- A documented statement from the preliminary applicant(s) as to why the concerns are not valid, or how concerns have been satisfactorily addressed and remediation has occurred.
- Affirmative documentation that demonstrates the quality of care applicant does not pose a risk to a child's physical/emotional health and well-being. Quality of Care Concerns Applicants may provide documentation of successful completion of additional education, training or corrective action.

A **CFS 542, Initial Inquiry**, form shall be completed by licensing staff for each individual making an inquiry into becoming licensed as a foster home provider, to determine if the individual meets the definition of a quality of care applicant.

When the individual has a quality of care concern involving a revocation, refusal to renew or surrender with cause where fewer than 5 years has passed, the individual making the inquiry shall be informed of the new language in statute that prevents them from applying at this time.

B. Department shall verify and review information in the Preliminary Application:

The licensing representative shall document the review and assessment on the **CFS-597-2, Licensing Representative/Supervisor Assessment and Recommendation**, based upon review of the following documents:

- Prior licensing complaints
- Prior child abuse/neglect investigations
- Prior involuntary holds

POS Agencies shall submit Quality of Care Concerns Applicant recommendations to the A&I Licensing Supervisor for review and approval.

The licensing supervisor or A&I supervisor shall review the completed assessment and recommendation from the licensing representative and direct the licensing representative to send out the **CFS- 597-3, Quality of Care Concerns Preliminary Application Decision**.

The Department shall obtain consultation from its Clinical Division as appropriate and prescribed by Department Rule and Procedures.

C. Potential outcome to a complete Preliminary Application

The Department may issue a foster family license to a Quality of Care Concerns Applicant if the Department is satisfied that the foster family home does not pose a risk to children and that the foster family home will be able to meet the physical and emotional needs of children. The Department must carefully review all relevant documents and obtain consultation from the Department's Clinical Division to make one of the following determinations:

- Deny the preliminary application based upon quality of care concerns (this prevents the individual from eligibility to apply for licensure)
- Approve the preliminary application based upon the quality of care concerns having been assessed and remediated and applicant has been determined able to meet the physical and emotional needs of a child
- Provide tentative approval of a preliminary application, contingent upon receipt of additional information or assessment
- Approve preliminary application based upon results of assessment and recommendation to limit placement to a specific child or children in the home

D. Department Written Response to a complete Preliminary Application

When the preliminary application is approved, the Department shall provide written notice to the quality of care applicant by the **CFS-597-3, Quality of Care Concerns Preliminary Application Decision** that they may now apply for foster home licensure through the same established requirements and methods used for other applicants seeking foster home licensure.

When the preliminary application is denied, the Department shall provide written notice to the individual as to why the preliminary application was denied, per the assessment required in the Children & Family Services Act.

VI. QUESTIONS

Questions regarding this Policy Guide may be directed to the Office of Child and Family Policy at 217-524-1983 or via Outlook at OCFP – Mailbox. Non Outlook users may e-mail questions to cfpolicy@idcfs.state.il.us.

VII. FORMS

The following forms are available on templates and can be ordered in the usual manner:

CFS 542, Initial Inquiry (revised)

CFS-597-1, Foster Care: Quality of Care Concerns Applicant Preliminary Application for Licensure (new)

CFS-597-2, Foster Care: Quality of Care Concerns Applicant Licensing Representative/Supervisor Assessment and Recommendation (new)

CFS-597-3, Quality of Care Concerns Preliminary Application Decision (new)

VIII. FILING INSTRUCTIONS

File this Policy Guide immediately following **Rule 383, Licensing Enforcement; Rule 402, Licensing Standards for Foster Family Homes; and Rule 431, Confidentiality of Persons Served by the Department.**

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