

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 9 ADULT AND COMMUNITY CARE PROGRAMS

CHAPTER 1401.1

CONFIDENTIALITY

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Historical Note: Chapter 17-1401.1 is based substantially upon chapter 17-1401. [Eff 12/5/97; am 10/21/05; R **OCT 30 2009**] (Auth: HRS §§346-10, 346-14) (Imp: HRS §§346-10, 346-14)

§17-1401.1-1 Purpose. The purpose of this chapter is to define the conditions under which the department of human services, social services division, adult and community care services branch (ACCSB), may disclose information related to:

- (1) Applicants or recipients of services provided by the ACCSB;
- (2) Individuals who are subjects of a vulnerable adult abuse report investigated by the ACCSB; and
- (3) Any other information gathered and maintained by the ACCSB. [Eff **OCT 30 2009**] (Auth: HRS §§346-10, 346-14) (Imp: HRS §§346-10, 346-14)

§17-1401.1-2 Definitions. For purposes of this chapter unless the context otherwise indicates:

"Authorized recipient of confidential information" means those entities authorized by departmental rules, state or federal statutes, or court order to receive information contained in the reports and records maintained by the department.

"Disclosure" means the release of confidential information by the department.

"Guardian ad litem" means a person appointed by the court whose role is to protect and promote the needs and interests of the adult or a party in a court hearing pursuant to section 346-234, HRS.

"Near fatality" means an act that, as certified by a physician, places the adult in a serious or critical condition or would result in the adult's death if untreated.

"Perpetrator" shall be as defined in section 17-1421-2.

"Record or records" means all written or electronic information gathered and maintained by the department in its state central registry or in physical records, including but not limited to:

- (1) Reports of vulnerable adult abuse accepted by the department for further action;
- (2) Documentation of actions taken by the department;
- (3) Medical, psychological, psychiatric, or other reports as well as departmental contacts, assessments, or reports; and
- (4) Any record or information collected and maintained by the department that identifies or contains information regarding a person who is:
 - (A) An applicant or recipient of services from the department; or

(B) A perpetrator of vulnerable adult abuse. "Re-disclosure" means the release of confidential information received from the department by the authorized recipient of the information.

"State central registry" means the information regarding reports of vulnerable adult abuse and subsequent actions by the department maintained in the department's information system.

"Vulnerable adult" shall be as defined in section 346-222, HRS. [Eff **OCT 30 2009**] (Auth: HRS §§346-10, 346-14, 346-225) (Imp: HRS §§346-10, 346-14, 346-225)

§17-1401.1-3 Maintenance of records. (a) The ACCSB shall keep records to document information acquired in the administration of the ACCSB programs.

(b) This information shall:

- (1) Substantiate the expenditure of public funds;
- (2) Be kept in confidential records and files; and

(3) Not be subject to any other law permitting inspection of public records. [Eff

OCT 30 2009] (Auth: HRS §§346-10, 346-14) (Imp: HRS §346-10)

§17-1401.1-4 Disclosure of records. (a) All records and information shall be confidential and unauthorized disclosure or re-disclosure shall be a violation. Records shall not be accessible for public inspection except as provided by this chapter.

(b) Disclosure of records shall be provided in accordance with departmental procedures, provided that when the record contains information the person is not authorized to receive, that information shall not be provided.

(c) Recipients of confidential information shall be bound by the same confidentiality restrictions as the department and shall maintain confidentiality and prevent unauthorized re-disclosure.

(d) The name of a reporter of vulnerable adult abuse shall be disclosed only with the reporter's written authorization or pursuant to a court order.

(e) Records containing communications between the department of the attorney general and the department shall not be disclosed as those communications are considered attorney-client privilege and are subject to

release only by court order. [Eff **OCT 30 2009**]
(Auth: HRS §§346-10, 346-14, 346-225) (Imp: HRS
§§346-10, 346-14, 346-225)

§17-1401.1-5 Disclosure of information to applicants, recipients, perpetrators, or entities designated by the applicant, recipient, or perpetrator to receive confidential information. (a) Disclosure of information to individuals or agencies other than those specified in section 17-1401.1-6 shall be allowed only when a written authorization has been obtained from the applicant, recipient, perpetrator, or the legal guardian of the applicant, recipient, or perpetrator. The written authorization shall be signed and dated by the applicant, recipient, perpetrator, or the legal guardian of the applicant, recipient, or perpetrator and shall specify:

- (1) The name of the individual or agency authorized to receive the information or to review the record;
- (2) The specific information the department is authorized to release and the purpose for which the information is being sought;
- (3) The name, social security number or birth date, and address of the applicant, recipient, or perpetrator;
- (4) The expiration date or expiration event that relates to the applicant, recipient, or perpetrator or the purpose of the authorization, and also specifying that if no expiration date or expiration event is specified the authorization shall expire one year from the date the authorization is signed; and
- (5) Whether the information is desired through review or by receipt of reproduced copies of the information.

(b) Information requested for the purpose of conducting a vulnerable adult abuse state central registry clearance shall be requested on a prescribed department form.

(c) Reproduced copies of information contained in the department's records, which the department is authorized to release, shall be provided at a cost related to the cost of reproduction, including but not limited to staff time to review, redact, and duplicate the requested record. When the information is required

for the purpose of presenting the applicant's, recipient's, or perpetrator's hearing appeal, there shall be no charge. In either case, actual postage cost shall be charged.

(d) Subsection (c) shall not apply to the reproduced copies of information that the department releases to persons or entities specified in section 17-1401.1-6.

(e) The department shall permit the review or provide a copy of the portion of the record that pertains to the applicant, recipient, or perpetrator pursuant to section 92F-23, HRS.

(f) Before the record is reviewed or copies of the record are released, the department shall block out the name and other identifying information that the receiving individual is not authorized to receive.

(g) Records shall be reviewed only in designated areas within the department's offices in accordance with departmental procedures. The records or any part of the records shall not be copied or removed from the premises except in accordance with departmental procedures. [Eff **OCT 30 2009**] (Auth: HRS §§346-10, 346-14, 346-225) (Imp: HRS §§92-21, 92F-21, 92F-22, 92F-23, 346-10)

§17-1401.1-6 Disclosure to third parties without written authorization or court order. (a) Disclosure of all or a portion of the record without written authorization or court order shall be authorized when made pursuant to a legitimate state purpose and in accordance with section 17-1401.1-4. A legitimate state purpose shall include but is not limited to disclosure to the persons or entities listed below unless otherwise specified in section 17-1401.1-7:

- (1) A court in the State for in camera review only;
- (2) Individuals, multidisciplinary teams or other consultant teams under contract to or in arrangement with the department to give consultation to social workers or the department;
- (3) Federal, state, and local officials, and their agents responsible for the administration, monitoring, or auditing of ACCSB programs and legislation, including agencies administering programs for purposes of:

- (A) The administration of federal or federally assisted programs that provide assistance, in cash or in kind, or services directly to individuals on the basis of need such as:
 - (i) Social security for supplemental security income; and
 - (ii) Housing and community development corporation of Hawaii for the section 8 programs and the low income housing projects; or
- (B) An audit or similar activity, conducted in connection with the administration of the department's programs by any governmental entity that is authorized by law to conduct the audit or activity;
- (4) The office of the legislative auditor for purposes of an audit authorized by law;
- (5) Police departments, the prosecutors' offices, the attorney general's office, the ombudsman's office, or any other state or federal agency when the disclosure is made for purposes directly connected with any investigation, prosecution, or criminal or civil proceedings conducted in connection with the administration of the department's social services, financial or medical assistance, and supplemental nutrition assistance programs. Under this paragraph, disclosure shall be permitted for such purposes as:
 - (A) The detection, investigation, or prosecution of violations of applicable state and federal laws or regulations in connection with these programs, including any and all aspects of theft, fraud, deception, or overpayment;
 - (B) Departmental claims against estates of deceased recipients, or initiation of paternity and nonsupport actions by the department under Title IV-D of the Social Security Act (42 U.S.C. §§651-662);
 - (C) Responding to requests for information in connection with lawsuits challenging the administration of the department's programs; and

- (D) Providing information to the ombudsman's office investigating complaints about the administration of the department's programs;
- (6) Banks, financial institutions, or any other payor of an ACCSB warrant or check. Disclosure shall be limited to information indicating that an ACCSB warrant or check honored by the bank, institution, or payor has been forged or otherwise wrongfully presented for payment;
- (7) Child support enforcement agency for obtaining or enforcing a child support order under chapter 576D;
- (8) State or county law enforcement officers of the current residence and business address of an applicant, recipient, or perpetrator when the information is needed for:
 - (A) An official administrative, civil, or criminal law enforcement purpose to identify the individual as a fugitive felon or parole violator; or
 - (B) An official purpose and the department has informed the individual of the circumstance in which the individual's address may be released;
- (9) Employees of a recognized social welfare organization. Disclosure shall only be permitted to facilitate the social welfare organization's provision of services to the applicant or recipient;
- (10) Persons directly connected with the administration or enforcement of programs that are required to participate in the state income and eligibility verification system. Information disclosed shall be limited to that which is required to enable the state income and eligibility verification system operations and shall be protected from unauthorized disclosure;
- (11) Persons engaged in a bona fide research or evaluation project where prior written approval has been secured from the director specifying the limits and scope of the project; and
- (12) Legally authorized agencies or entities with the responsibility for enforcing licensure or certification rules and regulations for

individuals, facilities, or other entities identified in a vulnerable adult abuse case, such as but not limited to the following:

- (A) The department of health as the licensing or certifying authority for health care facilities; and
- (B) The department of commerce and consumer affairs as the licensing or certifying authority for professional and vocational occupations.

(b) Disclosure to the public may be allowed at the direction of the director of the department when:

- (1) The subject of the information to be disclosed has been criminally charged with committing a crime relating to the vulnerable adult abuse or neglect report;
- (2) A law enforcement agency or official, a state's attorney, or a judge of the state court system has publicly disclosed, as part of the person's official duty, information regarding the provision of services by the department;
- (3) An applicant, recipient, perpetrator, or the legal guardian of an applicant, recipient, perpetrator, or other party has voluntarily made a public disclosure concerning the provision of services by the department; or
- (4) The subject of the information to be disclosed is missing, has suffered a near fatality, has been critically injured, or has died.

(c) In addition to subsections (a) and (b), information relating to vulnerable adult abuse, except as specified in sections 17-1401.1-4(d) and 17-1401.1-7, may be disclosed or copies of the record and other information may be released on a need to know basis and only as necessary to serve and protect the vulnerable adult and other vulnerable adults in similar situations, at the discretion of the department, to the following:

- (1) Grand juries, when connected with the prosecution of a vulnerable adult abuse case;
- (2) Legally authorized governmental, civilian, or military entities responsible for investigating or prosecuting vulnerable adult abuse or medicaid fraud;

- (3) Agencies or individuals authorized, contracted, licensed, or certified by the department to assess, diagnose, care, treat, supervise, or provide services to an individual who is the subject of a report of known or suspected vulnerable adult abuse;
 - (4) Licensed physicians or other medical authority concerned that a vulnerable adult under their care may be the victim of abuse;
 - (5) A coroner or medical examiner when there is reason to believe that a vulnerable adult has died as the result of abuse;
 - (6) A person, including but not limited to, a guardian ad litem, legal guardian, or operator of a residential care facility who is responsible for the welfare of the vulnerable adult named;
 - (7) Persons not otherwise listed, at the discretion of the department, to ensure the safety of a vulnerable adult subject to abuse, or to secure services or benefits for a vulnerable adult subject to abuse; and
 - (8) An individual identified as a perpetrator of vulnerable adult abuse on whom an official departmental finding or disposition was made.
- (d) Disclosure to the following agencies shall be permitted to the extent necessary to provide services and to determine eligibility or amount of assistance for applicants or recipients for ACCSB programs:
- (1) Private social service agencies, including purchase of service providers, from which the applicant or recipient receives services according to a case plan developed by the department; and
 - (2) Agencies administering programs under the Social Security Act under such Titles as XVI-SSI (42 U.S.C. §§1381-1383), IV-A AFDC (42 U.S.C. §§601-610), XX-social services (42 U.S.C. §1397).
- (e) The case record or information shall not be released in a judicial or administrative proceeding, either voluntarily or in response to any subpoena unless permitted by subsections (a) to (d). This includes requests or subpoenas from a governmental authority, the courts, a law enforcement official, the ombudsman's office, the attorney general's office, or from any other outside source. [Eff OCT 30 2009]

§17-1401.1-6

(Auth: HRS §§346-10, 346-14) (Imp: HRS §§92-21, 346-10, 571-84)

§17-1401.1-7 Restrictions against disclosure of information relating to human immunodeficiency virus (HIV), AIDS related complex (ARC), and acquired immune deficiency syndrome (AIDS). (a) All records including all communication, or specific medical or epidemiological information contained therein, that identify any individual who has or has been tested for HIV, ARC, or AIDS, shall only be released pursuant to section 325-101, HRS, and in accordance with departmental procedures.

(b) Persons or entities receiving information under this section shall maintain confidentiality of the information subject to section 325-102, HRS, which provides civil penalties for the unauthorized disclosure of information relating to HIV, ARC, and AIDS. [Eff **OCT 30 2009**] (Auth: HRS §346-10) (Imp: HRS §§325-101, 346-10)

§17-1401.1-8 Applicant's, recipient's, or perpetrator's right to correct case record. Each applicant or recipient of services provided by the ACCSB or perpetrator of vulnerable adult abuse shall have the right to request to have their record amended by the department in accordance with chapter 92F, HRS. [Eff **OCT 30 2009**] (Auth: HRS §§346-10, 346-14) (Imp: HRS §§92F-24, 92F-25)

§17-1401.1-9 Dissemination of material. All material sent or distributed to applicants or recipients of services provided by the ACCSB, including material enclosed in envelopes containing checks, shall be limited to the administration of social services programs.

- (1) Mailing or distribution of holiday greetings, general public announcements, voting information, and alien registration notices shall be prohibited.
- (2) Material relating to the health and welfare of applicants and recipients, such as announcements of free medical exams, availability of services or resources, and

consumer protection information may be mailed or distributed.

- (3) Only the names of the persons directly connected with the administration of the social services program and identified in an official capacity with the department shall be contained in material sent or distributed to applicants, recipients, and providers. [Eff **OCT 30 2009**] (Auth: HRS §§346-10, 346-14) (Imp: HRS §§346-10, 346-14)

§17-1401.1-10 Penalty. Any person who fails to safeguard confidential information or who violates rules governing the confidential nature of department information may be prosecuted for a violation.

Violators shall include, but shall not be limited to:

- (1) Any person, including any person who acquires information through authorized inspection, who divulges the information other than as authorized by law; and
- (2) A person who intentionally and knowingly aids or abets an unauthorized person in the inspection of the records or files. [Eff **OCT 30 2009**] (Auth: HRS §§346-10, 346-14) (Imp: HRS §§92F-27; 346-11, 346-14)