

**CHAPTER 411
DIVISION 5**

CONFIDENTIALITY

411-005-0000 Confidential Records

(Adopted 2/1/1984)

(1) Confidential records are all applications, records, papers, files, and communications of SSD unit offices, Area Agencies on Aging (AAA), and SSD/AAA subcontractors which relate to specific applicants for and recipients of public assistance, medical assistance and all federal and state funded services. As used in this policy, the terms "assistance" and "service" include all the above programs.

(2) General information, policy statements or statistical material which is not identified with any individual or family is not classed as confidential.

Stat. Auth: ORS 183 & ORS 410
Stats. Implemented: ORS 410.150

411-005-0005 General Statement on Release of Information

(Adopted 2/1/1984)

(1) It is SSD's intent that information be provided to or exchanged with agencies or helping organizations unless restricted by Oregon Statutes, Federal Regulations, or Court Orders. See OAR 411-005-0060 and 411-005-0065 for restrictions on sharing information on alleged abuse.

(2) DHHS Regulations, Public Law 94-88 and Oregon Statutes allow disclosure of information concerning applicants and recipients without their authorization for purposes directly connected with:

(a) The administration of Oregon public assistance laws. Basically, this means releasing information necessary to carry out the intent of assistance and service programs of SSD;

(b) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of an assistance or service program;

(c) The administration of any other federal or federally assisted program which provides assistance in cash, in-kind or services directly to individuals on the basis of need.

(3) There should be assurance that the confidential nature of the information will be preserved by the other agency or organization for its exclusive use, and used only for the purpose for which it is made available. Additionally, only information which is necessary for the purpose should be released.

(4) It is impractical to list each agency or helping organization in the state and indicate which would or would not be provided information without the client's written authorization. SSD unit and AAA staff are expected, in light of SSD intent and Subsections (2)(a), (b) and (c) of this rule, to determine whether requested information should be released. If a decision cannot be reached after a particular request has been considered by local SSD or AAA staff, SSD Program Operations may be contacted for help in making the decision.

Stat. Auth: ORS 183 & ORS 410

Stats. Implemented: ORS 410.140 & 410.150

411-005-0010 Release Disclosure of Information to the Client or Third Party or Other State or Local Agency

(Adopted 2/1/1984)

(1) Written Authorization

(a) The client, or person to whom he or she has given authorization, must be given access to the client's own case record except as provided in OAR 411-005-0050. The term "case record" includes all documents or written information pertaining to a client. Material in closed cases must be made available to the former agency clients within the limits discussed above.

(b) Before any record is opened for inspection by the client, all reference to any reported or suspected child abuse is to be removed. CSD will release information relating to child abuse to law enforcement officers and others. See OAR 411-005-0060 for references to alleged elderly abuse.

(c) A staff member designated by the SSD supervisor or AAA Director must be present while the client or the authorized third party has access to the case record. Neither the client nor the authorized third party will be allowed to remove any material from the case record. The SSD unit or AAA office will provide the person examining the case record with a copy of any portion of the case record requested.

(d) The staff member releasing information to a third party must be reasonably certain that the signature on the written authorization to release material is that of the client.

(e) Each third party authorization is valid for a period of four weeks following the date the authorization is signed by the client, unless specifically waived by the client. There is no limit to the number of times the client may authorize release of material contained in his or her case record.

(f) SSD 419, Authorization for Release of Information, may be used by the client in authorizing a third party access to his or her case record. The use of this form is not mandatory, as long as alternative written authorization contains the following information:

(A) Date, name of client;

(B) Signature of client or guardian;

(C) Name of provider directed to make the disclosure (unless for purposes of determining financial eligibility);

(D) Name of persons or organizations to which information is to be disclosed;

(E) Extent or nature of information to be disclosed;

(F) Date of condition of expiration of consent.

(g) SSD units and AAAs are not to develop their own authorization forms.

(h) A copy of the client's signed third party authorization must be filed in the case record.

(i) The client or his or her representative is allowed to review any part of a record which is to be used as the basis for a decision in a hearing except as indicated in Section 1(b) of this rule, and in OAR 411-005-0050 and 411-005-0060.

(j) At any time following the issuance of a hearing final order, the client may also review the recording of the hearing or the verbatim transcript of the hearing if one has been prepared, and the exhibits and papers filed in the proceeding.

(2) Authorization by Telephone

(a) When a client is in the office of another helping agency to whom SSD or AAA does not usually release information without written consent of the client and he or she wishes to have information released to them, he or she may personally call the designated SSD or AAA staff, explain the situation, then provide identification by reading the program, branch, and case number from the Medical ID card or provide their Social Security number. The worker verifies that this is the correct number and can be reasonably assured the person calling is the client. Information will not be released just on the statement of the helping agency that they are representing the client. The client must personally provide the authorization. The requested information could then be released for the benefit of the client. The incident must be recorded on form SSD-535.

(b) If a person alleging that he or she is the attorney, or other form of legal representative for a client, telephones an SSD unit or AAA office requesting information concerning the client, the worker or other authorized person will secure the name, address, and telephone number of the caller and the specific purpose for which the information is sought. The worker will then advise the caller that an

SSD or AAA staff person will be in communication again with the caller as soon as possible. After reasonable verification of the caller's identity, SSD or AAA staff person will communicate with the caller, either by telephone or in writing, and give the requested information, subject to other limits set forth in these sections.

Stat. Auth: ORS 183 & ORS 410 ORS 410.140, 410.150, 411.060

Stats. Implemented: ORS 410.140, 410.150, 411.060, 411.300, & 411.320

411-005-0015 Release of Information to a Law Enforcement Officer

(Adopted 2/1/1984)

An SSD or AAA employee must not volunteer information concerning a client being sought by a law enforcement officer. An employee having information which would assist an officer in making an arrest of a client or former client must furnish such information from his or her own knowledge on specific oral or written request by the officer. If the worker does not know the answer to the officer's question, he or she shall not obtain the answer from the case record. These restrictions do not apply to law enforcement officers involved in the carrying out of public assistance laws, investigations or criminal or civil proceedings conducted in connection with administration of assistance or service programs.

Stat. Auth: ORS 183 & ORS 410, ORS 410.140, 410.150

Stats. Implemented: ORS 410.140, 410.150, 659A.212

411-005-0020 Release of Information to a State or Federal Legislative Body or Committee

(Adopted 2/1/1984)

Any information which identifies any client by name or address must not be disclosed to any committee, advisory board, legislative body or individual member of such committee, board or body without written consent of the client except as provided by statute. Sometimes a client will write to a legislator or committee member to air a complaint. If the legislator or committee member requests information necessary to provide the client an adequate answer and submits a copy of the letter, SSD or AAA will consider the client's letter as authorization for release of information. If a

legislator or committee member calls for information regarding a client complaint, inform the caller that a worker will contact the client and call back. After calling the client and determining the client's willingness to have the information released, a staff member designated by SSD or AAA shall call the legislator or committee member and provide the information necessary to resolve the problem.

Stat. Auth: ORS 183 & ORS 410
Stats. Implemented: ORS 410.140 & 410.150

411-005-0025 Release of Information to Providers of Medical Services
(Adopted 2/1/1984)

Information may be released to providers of medical services to the extent necessary for proper billing of SSD, AFS or AAA for services provided. This includes stating that the person was or was not eligible for services during the period in question and providing the proper case number and person letter if needed.

Stat. Auth: ORS 183 & ORS 410
Stats. Implemented: ORS 410.140 & 410.150

411-005-0030 Unusual Requests for Release of Information
(Adopted 2/1/1984)

(1) When a verbal or written request for information is received from a source not covered in OAR 411-005-0005 through 411-005-0025, the request shall be referred to the Manager of SSD Program Operations.

(2) SSD and AAA must not publish lists of names of applicants or recipients for general release, or for commercial or political purposes. Program Operations will respond to unusual requests within five working days of receipt of the request.

Stat. Auth: ORS 183 & ORS 410
Stats. Implemented: ORS 410.150

411-005-0035 Release of Information in Judicial Proceedings

(Adopted 2/1/1984)

(1) Information in SSD and AAA records must not be divulged in any judicial proceeding unless:

(a) Directly connected with administration of public assistance or service; or

(b) The client has given written authorization for release of specific information; or

(c) By specific court order A judge orders the release of the information.

(2) Except in the presence of one of these three conditions, no information shall be released in any form during any stage of a judicial proceeding either voluntarily or as the result of a subpoena.

(3) When an SSD or AAA staff member is served with a subpoena or other legal document which might involve the prohibition on release of confidential information, he or she will bring to the attention of the presiding judge the state statute ORS 411.320 and ORS 418.130 relating to confidentiality of the records in question and will ask the court's guidance in testifying under that statute. He or she will then answer questions at the direction of the judge.

Stat. Auth: ORS 183 & ORS 410

Stats. Implemented: ORS 410.150

411-005-0040 Release of Information in Non-Judicial Proceedings

(Adopted 2/1/1984)

Occasionally, a case record will be subpoenaed by another agency or board (for example, the Workers Compensation Board), or a worker will be subpoenaed to appear before a grand jury or some other body. In these cases, the following steps are to be taken:

(1) Respond to the subpoena by appearing with the case record as commanded. Never send the case record to an attorney or anyone they may designate. The case record will always remain with an SSD or AAA staff.

(2) Refuse to release information to the attorney on the basis of ORS 411.320 and ORS 418.130, pointing out that the information can be released only at the direction of the court, or with consent of the client.

(3) If, under ORS 656.732, the attorney or referee proceeds to the Circuit Court to compel release of information, cooperate with the court, remind the court of ORS 411.320 and ORS 418.130 and provide information at the direction of the Circuit Court judge.

Stat. Auth: ORS 183 & ORS 410

Stats. Implemented: ORS 410.140 & 410.150

411-005-0045 Release of Psychiatric or Psychological Reports

(Adopted 2/1/1984)

(1) Requests for release of psychiatric or psychological information by a client will be considered on an individual basis. Such reports are part of the case record and must be made available to the client unless the attending physician documents, in the patient record, that release of the information would constitute an immediate and grave detriment to the treatment of the patient.

(2) Psychiatric or psychological information originating from another source and marked "confidential" should not be released unless the original provider is consulted as to whether the information falls into a protected category. When possible, it is preferable to encourage the client to obtain the information directly from the original source.

Stat. Auth: ORS 183 & ORS 410, 42 CFR part 2

Stats. Implemented: ORS 410.140 & 410.150, 179.505

411-005-0050 Release of Information Received From Another Agency
(Adopted 2/1/1984)

(1) Information pertaining to a client which was obtained from an agency or other source will be for the use of SSD or AAA in their administration of public assistance and services. This material becomes a part of the case record. The client cannot obtain or authorize the release of information provided to SSD or AAA by another person, agency, or institution operating under statutes allowing them to refuse such information to the client or his or her representative.

(2) If information originating from other agencies and contained in the client record is marked "confidential", or if reason exists to suspect that the information may be in a protected category, it should not be released until it is determined, whether or not this is the case. Providers and information which may be subject to special provisions include, but are not limited to, the following:

- (a) Social Security Administration;
- (b) Veteran's Administration;
- (c) Workers Compensation Department;
- (d) Mental Health Division;
- (e) Certain alcohol treatment reports, reports of child abuse, reports of elderly abuse(see OAR 411-005-0060).

(3) Whenever possible, clients should be encouraged to seek information directly from originating agencies.

Stat. Auth: ORS 183 & ORS 410
Stats. Implemented: ORS 410.140 & 410.150

411-005-0055 Service Providers
(Adopted 2/1/1984)

(1) Confidentiality must be respected in sharing client information with nursing facilities and residential facilities, adult foster homes and other service providers. A written release of information signed by the client or his or her guardian must be obtained prior to release of information from the case record. Identifying information can then be released, including such data as: the client's full name and date of birth; name, address, phone number of a relative or responsible person; Social Security number; physician; dentist and drug store to be used.

(2) Service providers must not release information from a client's medical or facility record to someone not authorized by law to receive it unless the client or his/her guardian has given written consent. Service providers under contract to SSD or AAA to provide services to clients shall provide client information to the contracting agency for purposes of carrying out services to the client.

(3) Good judgment must be used in sharing client information with service providers. It must be pertinent to the needs of the client and relevant to the provision of service and care needs. Pertinent information may include, but is not limited to: special diets, restrictions on activities, personal care requirements, medication frequency and supervision, medical appointments and other information that may affect the care, services or activities provided to a client.

Information shared with a provider places the provider under the same restrictions of information sharing as applies to the SSD or AAA.

Stat. Auth: ORS 183 & ORS 410
Stats. Implemented: ORS 410.140

411-005-0060 Alleged Elderly Abuse (ORS 410.610 - 410.990)

(Adopted 2/1/1984)

(1) The identity of the person making the report shall be treated as confidential information and shall be disclosed only with the written and informed consent of that person or by judicial process.

(2) Where there is reasonable grounds to believe abuse has occurred, the report shall be treated as confidential. The report may be disclosed only with the written consent of the victim or by judicial process. When reporting

back to the complainant, the staff member shall explain only that the investigation has been completed and that appropriate action is being taken.

(3) Where there is reasonable grounds to believe that no abuse has occurred, the staff member may report only that the investigation has been completed and that no abuse was found.

(4) The report back to the complainant may be done verbally unless requested that it be done in writing.

(5) SSD shall make available the names of the public and private official who made the report and the alleged elderly victim to any law enforcement agency, to any public agency which certifies the persons practicing therein, to any public agency providing protective services for the elderly persons, to the Mental Health Division, and to the Long-Term Care Ombudsman, if appropriate. The Division shall also make the information available to any private non-profit agency providing protective services for the elderly person. When this information is made available to the private agency, ORS 410.610 to 410.990 relating to confidentiality apply to the private agency.

Stat. Auth: ORS 183 & ORS 410

Stats. Implemented: ORS 410.660 & 410.690

411-005-0065 Alleged Abuse in SNFs and ICFs

(Adopted 2/1/1984)

(1) Unless a written release specifies otherwise, the names of the complainant and victim are confidential, but may be shared with any law enforcement agency, other State agencies, and the State Long-Term Care Ombudsman.

(2) The name of the victim may be released to long-term care facility staff or others if needed to conduct the investigation.

(3) The lower part of the SSD 723 and all of the SSD 723A is public information. Before releasing such copies, however, the SSD Unit Type B AAA shall call SSD Program Operations Section for technical assistance. A

verbal report should be made to the complainant by the SSD Unit Type B AAA.

Stat. Auth: ORS 183 & ORS 410

Stats. Implemented: ORS 410.150 & 410.690