B. Confidentiality of Client Information

**Applicability**

- This policy is applicable to Self-Sufficiency permanent and temporary employees, volunteers and contractors of any self-sufficiency program who either work at a Department of Human Services (DHS) site or have access to any DHS database, case management software or the Group Wise system for the State of Oregon.

**Intent**

- To preserve the confidentiality and privacy of client information;

- To work together with partners, other agencies and the client for the benefit of the client;

- To summarize how information about clients may be used and disclosed consistent with confidentiality requirements.

**Expectations**

- Employees, volunteers and contractors covered by this policy may only use or disclose information that identifies a self-sufficiency client as permitted by either this policy or by a current and valid written authorization from the client.

1. Confidentiality is presumed

   All information that identifies an individual client is confidential. The department may not release or disclose client information, except as specifically authorized by the client in writing, by statute or administrative rule, or as ordered by a court. This policy summarizes the situations in which use and disclosure is permitted.

   Obtain a signed Authorization for Use and Disclosure of Information (MSC 2099) from the client if there is any question regarding whether a release of information is required. View the request as one of honoring and respecting the choice and dignity of your client, not as an impediment to providing services.

2. Enforcement and sanctions

   DHS employees who violate DHS policies and procedures regarding the safeguarding of information about an individual are subject to disciplinary action by DHS up to and including dismissal, and legal action by the individual.
DHS employees who knowingly and willfully violate state or federal law for improper use or disclosure of information about an individual are subject to criminal and civil penalties.

**Example:** *Criminal sanctions of up to 10 years in federal prison apply to anyone who sells client information.*

| Enforcement, Sanctions, and Penalties for Violations of Individual Privacy Policy |
| DHS Policy DHS-100-009 | Enforcement, Sanctions, and Penalties for Violations of Individual Privacy |

3. **Minimum necessary requirement**

   Staff must make reasonable efforts to limit the client information they are using, requesting or disclosing to the minimum necessary in the particular situation.

   This requirement does not apply to:

   - Disclosures or requests by a health care provider for treatment;
   - Disclosures made to the individual about his or her own protected information;
   - Uses or disclosures authorized by the individual that are within the scope of the authorization;
   - Disclosures required by law.

   The minimum necessary standard should be considered at the time the worker and client are mutually completing a written *Authorization for Use and Disclosure of Information* (MSC 2099).

   ✔ **SEE DHS POLICY DHS-100-004 FOR MORE INFORMATION ABOUT THE MINIMUM NECESSARY REQUIREMENT AND EXCEPTIONS.**

4. **Situations in which a written authorization is not required**

   There are a number of instances in which federal and state law and rule allow information about a client to be used and disclosed without written authorization and as necessary to administer DHS programs (including title XIX).

   Here are some examples:

   - When the information is health or treatment information (but not HIV or substance abuse treatment information) and is being released for the purposes of
treatment, payment or health care operations. The minimum necessary standard applies to releases for purposes of payment or health care operations;

- When the information being released is nonhealth information that is necessary to carry out the intent of an assistance or service program connected with or operated by the department or designated agency;

- When the information is nonhealth information and is being released to a DHS contractor (JOBS, Family Support and Connections...) in order to administer DHS programs;

### Disclosure of Client Information Rule

**461-105-0130 — Disclosure of Client Information**

- When the information being released is about a specific client and is being released to that client. This exception means that DHS clients have access to their own information without signing an authorization;

- When the information is nonhealth information and is being released to an Oregon attorney who represents that client if both of the following requirements are met:
  - The attorney states that he or she currently is representing the client;
  - The attorney states that the client has authorized disclosure of the client information to the attorney.

### Disclosure of Client Information Rule

**461-105-0130 — Disclosure of Client Information**

- When using de-identified information (limited data sets);

**SEE POLICY [dhs-100-007](#) (DE-IDENTIFICATION OF CLIENT INFORMATION AND USE OF LIMITED DATA SETS) FOR MORE INFORMATION ON DE-IDENTIFICATION OF INFORMATION.**

- When exchanging nonhealth, nontreatment information with other governmental or private, nonprofit agencies if necessary to assist applicants or recipients of public assistance to access and receive other governmental or private, nonprofit services that will benefit or serve the applicant or recipient. This exception includes instances in which a DHS worker is in a position to advocate for a client without disclosing health or treatment information. Nevertheless, reasonable efforts must be made to obtain the applicant or recipient’s authorization in advance;

### Disclosure of Client Information Rule

**461-105-0130 — Disclosure of Client Information**
• To report suspected abuse of a child or an adult (elder abuse or abuse of a person with a mental illness or developmental disability);

Note on reporting substance abuse information:

• **Child abuse:** If necessary, substance abuse treatment information may be disclosed to Child Welfare in order to make an initial report of suspected abuse of a child. Any subsequent disclosure of substance abuse information would require a court order or written authorization by client;

• **Elder abuse or abuse of a person with a mental illness or developmental disability:** Substance abuse treatment information may not be disclosed without authorization in order to report suspected elder abuse or abuse of a person with a mental illness or developmental disability. If it is necessary to make a report without authorization, the report must be done without revealing a person is in substance abuse treatment or has a substance abuse problem.

Note on reporting mental health information:

• **Child abuse:** While the reporting of child abuse is mandatory under law, mental health records are not required to be part of that reporting. Release of mental health records requires a court order or written authorization by the client;

• **Elder abuse or abuse of a person with a mental illness or developmental disability:** While the reporting of elder abuse and abuse of a person with a mental illness or developmental disability is mandatory under law, mental health records are not required to be part of that reporting. Release of mental health records requires a court order or written authorization by the client.

• To conduct any investigation, prosecution or criminal or civil proceeding in connection with administering DHS programs or for any legally authorized audit or review by a governmental entity in relation to administering DHS programs;

• To the extent needed to provide emergency medical treatment. This includes Alcohol & Drug (A&D) or mental health treatment;

• When DHS believes in good faith that the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and the report is to a person reasonably able to prevent or lessen the threat, including the target of the threat;

*Example: If DHS believes a person to be suicidal, information may be released without authorization to a mental health provider.*
Uses and Disclosures of Client or Participant Protected Information Rule

407-014-0020 — Uses and Disclosures of Client or Participant Protected Information

- When DHS has a court order signed by a judge.

The following sections in this chapter provide more detailed examples in determining whether an authorization is required. If you have any questions, contact your local DHS Privacy Point Person, a Central Office Program Analyst or the Central Office CAF Privacy Representative.

5. Use of information within DHS

“Program Use” refers to the sharing of client information within the self-sufficiency program or the sharing of information between program staff and DHS administrative staff that support or oversee the program, such as the exchange of information between an eligibility worker and the overpayment unit. Program use of information is permitted without a written authorization from the client but is subject to the minimum necessary standard.

“Cross-Program Use” refers to the sharing of information about a self-sufficiency client with another DHS program, such as Child Welfare or Vocational Rehabilitation. The following are circumstances which would allow for sharing of information without a client’s authorization:

1. As needed to determine eligibility and/or to coordinate services or benefits;

2. The disclosure is intended to benefit the client, or to assist client in accessing other services;

3. For mandatory reporting of child or elder abuse; or

4. Self-Sufficiency is a member of the local county multi-disciplinary child abuse team as statutorily defined; and the information shared is necessary for the prevention, investigation, and treatment of child abuse.

While we strive to work together with other program areas to better serve the client, at times we may be limited by federal and state laws in sharing client information across programs without a written authorization. Unless the sharing of information is for a purpose described above, an authorization will generally be required. For other types of information in the absence of written authorization, the permissibility of cross-program use of information (within DHS) depends on the intended use of the information.
NOTE

Cross program use of physical health, substance abuse, mental health and vocational rehabilitation information records require written authorization and may be limited to the particular program areas named on the authorization form. If such limitation is noted on the authorization form, disclosure is limited to the programs named, and minimum necessary standards apply.

6. Disclosure of information (outside of DHS)

In general, client information may not be used or disclosed without client authorization for purposes other than those related to the administration of DHS programs. However, nonhealth information may be disclosed to other governmental or private, nonprofit agencies if necessary, to assist applicants or recipients of public assistance programs to access and receive other services that will benefit or serve the applicant or recipient. Reasonable efforts must be made to obtain the applicant or recipient authorization in advance: however, DHS applications for benefits inform clients that we may verify what they report to us. Do not disclose health or treatment information for these purposes without client authorization.

Disclosure of Client Information Rule

| 461-105-0130 — Disclosure of Client Information |

Disclosure and use of records limited to purposes connected to administration of public assistance programs; contents as privileged communication; exceptions

| ORS 411.320 — Disclosure and use of records limited to purposes connected to administration of public assistance programs; contents as privileged communication; exceptions |

The following provides some examples of common situations:

(A) State and federal agencies

- Subject to the minimum necessary standard, client information may be disclosed without a written authorization to state and federal agencies such as the Department of Justice, Secretary of State Audits Divisions, or Food and Nutrition Service that provide administrative support or oversight to the DHS program whose information is being disclosed;

- No authorization is required to provide sufficient information to accomplish a referral on behalf of a client.
(B) Alcohol and Drug (A&D) and Mental Health (MH) providers, Managed Care plans and Medical providers

- No authorization is required to provide sufficient information to accomplish a referral on behalf of a client; reasonable efforts to obtain an authorization must be made;

- No authorization is required to provide information necessary for activities related to payment, including billing and collection;

- Obtain an authorization to share information about substance abuse treatment and HIV for purposes of treatment. An authorization is not required to share other information for treatment purposes;

- Obtain an authorization to receive or provide information for purposes other than treatment, referral, payment.

(C) Social Security Administration (SSA)

- No authorization is required to report suspected fraud or abuse to SSA.

(D) Medical transportation

- No authorization is required to provide sufficient information to accomplish a referral on behalf of a client or to obtain the appropriate level of care during transportation;

- No authorization is required to provide information necessary for activities related to payment, including billing and collection;

- An authorization is required to provide information for other purposes.

(E) Nonmedical transportation

- No authorization is required to provide sufficient nonhealth information to accomplish a referral on behalf of a client. No authorization is required to provide information necessary for activities related to payment, including billing and collection;

- An authorization is required to obtain or provide information for other purposes.

(F) Child care providers

No authorization is required to release to the client’s childcare providers:

- The program for which the client is eligible;

- The amount of the DHS child care payment;
• The client’s copayment amount;
• Reasons for a delay in payment. Do not disclose any information that is not specific to the reason for the delay.

**Release of Client Information to Service Providers and Legal Bodies Rule**

461-105-0110(2) — Release of Client Information to Service Providers and Legal Bodies

(G) Housing

• No authorization is required to provide nonhealth information to accomplish a referral on behalf of a client;
• No authorization is required to provide information necessary for activities related to payment, including billing and collection;
• An **authorization is required** to provide information for other purposes.

**Disclosure of Client Information Rule**

461-105-0130 — Disclosure of Client Information

(H) Employers

• No authorization is required to disclose the minimum necessary information when needed to verify questionable information reported by the client;
• **An authorization is required** to obtain or provide information for other purposes.

(I) Law enforcement

No authorization is required when law enforcement is involved in carrying out public assistance laws, investigating proceedings connected with administering the benefit programs of the department, or reporting a crime related to abuse (see exception for EBT information below).

The department may release the client’s address, Social Security number and photo (if available) to a law enforcement officer without an authorization if the law enforcement officer makes the request in the course of official duty, supplies the person’s name and states that the client:

(a) Is a fugitive felon (someone fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony or is violating parole or probation); or
(b)(i) For all programs except SNAP, has information that is necessary for the officer to conduct official duties of the officer and the location or apprehension of the client is within the officer’s official duties.

(b)(ii) For clients only in the SNAP program, has information that is necessary to conduct an official investigation of a fugitive felon or someone violating parole or probation.

**EXCEPTION**

*If domestic violence has been identified in the household, do not release information about a victim of domestic violence unless a member of the household is wanted as a fugitive felon or is violating probation or parole.*

No authorization is required when you are disclosing personal knowledge about a client that does not come from the interaction by the client with the department.

- **An authorization is required** to provide other client-specific information to a law enforcement officer. This requirement includes when a law enforcement officer is requesting information about the owner of an EBT card. DHS cannot release EBT information regarding the owner of the card to anyone, even an arresting officer. DHS may take information from the officer regarding the card, including the number of the card, in order to take the necessary steps internally to correct the situation.

**Release of Client Information to Law Enforcement Officers Rule**

461-105-0100 — Release of Client Information to Law Enforcement Officers

(J) Insurance companies

- **An authorization is required** to disclose client-specific information.

(K) Public and elected officials

Except for social security numbers, health, treatment and domestic violence information, no authorization is required to provide the minimum necessary information in response to a staff member in the office of a member of the Oregon State Legislature or United States Congress who has received a complaint from a client and the program responding is provided with a copy of the written complaint.
• Oral authorization is required if a DHS worker is contacted by a staff member in the office of a member of the Oregon State Legislature or United States Congress who has received only an oral complaint. The DHS worker will confirm with the client that the worker may speak with the staff member regarding the client. Confirmation from the client should be documented in the client’s file.

Client Authorization for Release of Client Information to Third Party Rule

461-105-0070 — Client Authorization for Release of Client Information to Third Party

Release of Client Information to Service Providers and Legal Bodies Rule

461-105-0110(4) — Release of Client Information to Service Providers and Legal Bodies

(L) Other interested persons (neighbors, friends, advocates, attorneys)

• If other interested persons are present while the client is disclosing information about themselves, authorization is not needed.

An authorization is required if the worker is disclosing any client-specific information while other interested persons are present.

Attorneys. Client information – other than health or treatment information – may be disclosed to an Oregon attorney who represents that client if all of the following requirements are met:

(a) The attorney states that he or she currently is representing the client.

(b) The attorney states that the client has authorized disclosure of the client information to the attorney.

(c) The identity of the attorney is verified in accordance with Section 20, Verification.

Disclosure of Client Information Rule

461-105-0130(4) — Disclosure of Client Information

(M) Research

• Disclosure or review of department records for research purposes is prohibited unless the designated CAF manager to approve research requests has authorized the specific person or organization and their research subject.

For situations not covered here, or for other questions, contact your local DHS Privacy Point person, a Central Office program analyst or the Central Office CAF Privacy Representative.
(N) Foster care and adoption assistance

- For all programs except SNAP, no authorization is required to disclose information for purposes directly connected with foster care and adoption assistance under title IV-E of the Social Security Act.

### Disclosure of Client Information Rule

- **Disclosure of Client Information Rule**

  461-105-0130(4) — Disclosure of Client Information

### NOTE

An Authorization is required to share mental health or substance abuse treatment information.

7. **Requirement to track certain disclosures**

DHS must list on the *Disclosures of Protected Health Information (PHI)* ([MSC 2097](#)) and disclosures of protected health information (PHI) that are not otherwise allowed by a client’s authorization or to carry out treatment, payment or health care operations. The [MSC 2097](#) should be kept in each client’s case file and should stay with the file if the case is transferred to another office.

Disclosures that must be logged on the [MSC 2097](#) include:

- PHI disclosed in response to mandatory child abuse or elder abuse reporting laws to an entity authorized by law to receive such a report;

- PHI about an individual that is ordered to be disclosed pursuant to a court order in a court case or other legal proceeding. Include a copy of the court order with the accounting of the disclosure;

- PHI about an individual provided to law enforcement officials pursuant to a court order. Include a copy of the court order with the accounting of the disclosure;

- PHI about an individual provided by DHS staff to avert a serious threat to the health or safety of the person or others;

- PHI about an individual that is disclosed pursuant to a Public Record request.

Disclosures that are not required to be listed on the [MSC 2097](#) include those that are:

- Authorized by the client;
• Made to carry out treatment, payment or health care operations;
• Made to the client;
• Made to persons involved in the client’s health care;
• Made to correctional institutions or law enforcement officials having lawful custody of an inmate.

8. Access and disclosure of client information to clients, representatives and family members

Client records are subject to redaction prior to access or disclosure. Client records frequently include information pertaining to other individuals, and must be redacted. Redaction should be done by first copying the original record, then blacking out with a permanent marker the information to be withheld and finally making a copy of the redacted record. In most cases, the following information should be redacted:

• Names, social security numbers, dates of birth, addresses and phone numbers of all third parties (those not in the filing group);
• Social security numbers, dates of birth and other personally identifiable information for other individuals on the case, including spouse or partner;
• All Drug and Alcohol treatment records pertaining to someone other than the individual;
• All medical, mental health and vocational rehabilitation records pertaining to someone other than the individual;
• Any records relating to domestic violence;
• Information that would cause harm to the client or to another person; then follow the required procedure outlined below;
• If information requested is being withheld, you must indicate generally the nature of the document or information withheld: e.g., psychotherapy notes of Dr. Jones, June 2003.

NOTE

While parents may have access to personal identifiable information regarding their minor children on their own case, minimum necessary standards must be considered. Minors age 14 and older have the right to confidential mental health and alcohol and drug treatment services. Please consult a policy analyst or the SSP Privacy Representative if additional assistance is needed.
For more information on redacting records, please contact the CAF Subpoena Coordinator.

(A) Client access to their own information

Clients have a right to access their own records, which include medical and mental health information and reports, subject to certain limitations as outlined in OAR 461-105-0060(6) (confidential informants) and in the Client Privacy Rights Policy (DHS-100-002). If DHS denies access because of a good-faith belief that a disclosure could cause harm to the client or to another person, the decision to deny must be made by a licensed health care professional or other designated staff, and DHS must make a review of this denial available to the client. If the client wishes to have this denial reviewed, the review must be done by a licensed health care professional who was not involved in the original decision.

When a client, or person or entity to which he or she has given written authorization, requests access to their own case record, the Request for Access to Records (MSC 2093) may be used; however, it is not required. A client does not need to complete the Authorization for Use and Disclosure of Information (MSC 2099) form in order to access their own records. A staff person must be present while the client or authorized representative has access to original documents from the case record.

Except for HIV information, case record information may be requested by the client and released to the client by telephone if the client is able to satisfy the branch as to their identity.

Release of Information to the Client Rule

In response to client requests for verification or calculation of DHS benefits, the Supplemental Nutrition Assistance Program (SNAP) Benefit Verification letter (DHS 839) and the Notice of Income and Benefit Calculation (DHS 7294) should be used for most purposes. If these options do not meet the need, DHS screen prints may be used as an alternative (FSRN, Wish, etc.). However, DHS does not have authority and should never print or disclose other agency screens (such as, but not limited to: SSA, Child Support, SAVE, etc.). DHS screen prints must be redacted as outlined above in section 8.

SEE DHS POLICY DHS-100-004, SECTION (4)(D) AND FORM MSC 2093 FOR MORE INFORMATION ON CLIENT RIGHTS TO THEIR OWN INFORMATION.
(B) Family members

The department is generally required to make the minimum necessary information in the case record available to a family member if the family member is a member of the filing group or is authorized by a member of the filing group. This minimum necessary standard does NOT allow sharing of personally identifying information (such as social security number or date of birth), alcohol and drug, mental health records or other sensitive information unless the client to whom the records pertain has authorized access on the MSC 2099. The primary person (including Non-needy Caretaker Relatives) and filing group members may only have access to information that is related to the time during which they had that position in the case. If the family member is not in the filing group, there must be a signed authorization before information may be disclosed to the family member.

(C) Guardians

No authorization is required for that subject matter/information over which the guardian has authority. The guardian has the same access to the client file as the client in those areas. A guardian with full powers would have access to the entire file. If unclear, ask to see the order of court appointment.

(D) Legal services (private attorney or Legal Aid)

Client information, other than health or treatment information, may be disclosed without a written authorization to an Oregon attorney who represents that client if both of the following requirements are met:

(1) The attorney states that he or she currently is representing the client.

(2) The attorney states that the client has authorized disclosure of the client information to the attorney.

9. Authorization for use and disclosure of information

A client gives written authorization for release of information by completing the Authorization for Use and Disclosure of Information (MSC 2099). The MSC 2099 is
expected to be mutually completed in the presence of the client whenever possible to facilitate discussion and case planning, as well as making sure the client understands the form before signing. The worker should also answer any questions the client has about the MSC 2099 and explain to the client the client’s right to request limitations on the disclosure of their information.

There may be various barriers to client understanding of the MSC 2099. These barriers may include physical or mental disabilities, limited English proficiency or the inability to read. The presence of a barrier to understanding does not necessarily mean that the person is incapable of giving informed consent.

There is no need to obtain witness of a client signing the MSC 2099 unless there are other reasons for doing so (for example, client request, mental competency issue, etc.).

There should be only one record holder listed per form. The form must include the signature of the individual on the form. In situations where an authorization for release of information is required, staff may not even identify a person as being a client of the department until the authorization has been completed.

The MSC 2099 must include a specific purpose for which information will be disclosed. Information may not be disclosed beyond the purpose that is listed on the MSC 2099. If it is necessary to disclose information beyond the purpose listed on the MSC 2099, a new MSC 2099 must first be completed, listing that specific purpose, before information may be disclosed.

- Do not request unnecessary information about a client or more than is needed.

The MSC 2099 is valid for one year, unless otherwise specified.

Provide the release form in the appropriate native language or in an alternate format (Braille, large print, etc.), as necessary.

If you believe that an outside agency, organization or business is incorrectly citing confidentiality laws as a reason to withhold information that you need, you may contact the DHS Privacy Office or your Cluster Privacy Coordinator for assistance.

Oral Authorization: Except for health, treatment, and domestic violence information, an oral authorization from the client is sufficient to allow oral release of case record information specified by the client to third parties. An oral authorization to release information to a third party is valid for a period of 30 days, unless a shorter time period is given. The worker should document the oral authorization.
10. **Non-DHS authorization forms**

The use of a non-DHS authorization form is permissible if the authorization contains all of the following information:

(A) A description of the information to be disclosed, that identifies the information specifically;

(B) The identity of the person, classification of persons or DHS program area authorized to make the disclosure;

(C) The identity of the person, classification of persons or entity to whom the information may be disclosed;

(D) The purpose of the disclosure;

(E) An expiration date, or an expiration event;

(F) The dated signature of the individual, the individual’s attorney or the individual’s personal representative.

- If the authorization is signed only by the individual’s personal representative, a description or explanation of the representative’s authority to act for the individual, including copies of any court documents appointing the personal representative, must also be provided.

11. **What if the client refuses to sign the authorization?**

An individual does not have to sign the release form and sometimes will refuse to sign a release form. The worker should talk through with the client what specific objections the client has to the release and why. It may also help to explain to the client why it is helpful to the department to be able to receive and share certain information about the client. If, following that conversation, the client still does not want to authorize disclosure of their information; the worker should explain to the client that they are then responsible for providing any information that would otherwise have been obtained with the authorization.
Failure to sign an authorization cannot be the basis for denying program services to otherwise eligible applicants. However, if the release of information is necessary to obtain documentation related to eligibility for the program, a denial would be based on the lack of required verification necessary to determine program eligibility and not on the refusal to sign the authorization.

If verification is needed to ensure compliance with JOBS program activities but the client will not sign a release of information allowing a provider to directly provide information related to a client’s compliance with their JOBS activities, the client is then responsible for bringing in proof of compliance with their JOBS activities to their case manager.

For example, if a client is in Alcohol & Drug (A&D) treatment but does not authorize disclosure of information from the treatment provider to the worker, then it is the client’s responsibility to provide the needed information to the worker. If the client does not provide this information to their case manager, the case manager will be unable to determine whether the client is complying with their case plan. The client may then be conciliated and disqualified if good cause is not found. However, the client may not be disqualified for refusing to sign the authorization.

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<th>Requirements for Mandatory Employment Program Clients; Pre-TANF, REF, SNAP, TANF Rule</th>
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<td>461-130-0315 — Requirements for Mandatory Employment Program Clients; Pre-TANF, REF, SNAP, TANF</td>
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12. **Revocations (or cancellations) of authorizations**

A valid revocation should be treated similarly to the situation of a client who refuses to sign an authorization, as discussed in Item 11 (GP-B.11). A revocation about A&D information may be made orally. For all other information, the request must be in writing.

Write the method and date of the cancellation on the authorization form, add the current date if different from the cancellation date, initial the cancellation entry, and place the authorization form in the client file.

If the authorization has been placed in an information system, make sure the cancellation is noted in those systems as well as in the paper file.

13. **Requests to restrict use or disclosure of client information**

A client has the right to request a restriction on use or disclosure of their information. Use the *Request for Amendment of Health Record* (MSC 2095) for this purpose. DHS is not obligated to agree to a restriction and may deny a request for restriction or may agree to a restriction more limited than what the client requested.
When approving a client request for restriction on use and disclosure of their information, use caution. You must be able to provide adequate safeguards to the information in question. If safeguards cannot be provided, the request must be denied. When denying a client’s request, complete the bottom portion of the MSC 2095 and send a copy of the MSC 2095 to the CAF Privacy Representative.

**EXCEPTION**

*Certain information, such as alcohol and drug (A&D) and mental health (MH) information may only be used and disclosed as authorized by the client. This means that if a client has asked for disclosure of their A&D or MH information to be restricted to a particular entity or person, staff may not deny the restriction and, instead, must abide by that restriction.*

**Client Privacy Rights**

DHS-100-002 — Client Privacy Rights

14. **Further disclosure (re-disclosure) of information**

Further disclosure is any use or disclosure of information obtained under an authorization form:

- With any program in DHS or person or entity outside DHS not listed on the authorization form; or
- For any purpose not listed on the authorization form.

Information received by the department that is otherwise confidential or privileged under state or federal law may not be further disclosed to another person or entity unless the client provides written authorization for disclosure of that information or another exception applies. This requirement means that, prior to further disclosure of information, the applicant or client must first fill out, sign and date an Authorization for Use and Disclosure of Information (MSC 2099) form for that disclosure.

**Example:** The department often obtains copies of the medical records of an individual in connection with an eligibility determination or for case planning purposes. These medical records obtained from a third party may not be used for cross-program purposes, or redisclosed to another person or entity outside DHS unless permitted under the original authorization, or a new authorization is obtained, or another exception applies.
15. Suspected child abuse/elder abuse

Department employees are required to comply with Oregon Child Abuse reporting laws (ORS 419B.010-419B.015), Elder Abuse reporting laws (ORS 124.060 and 124.065) and Mentally Ill Persons and Persons with Developmental Disabilities reporting laws (ORS 430.735-430.765). Speak with your supervisor if you have any questions about abuse reporting.

When there is suspected abuse, the worker must do all the following:

- Comply with the abuse reporting laws by making a mandatory report;
- Narrate the referral in TRACS by stating only “Referral made to [agency].” Do not narrate the abuse itself;

**Example:** A referral of child abuse to Child Welfare is narrated in TRACS as “Referral to CW.”

- If the report included disclosure of protected health information, log the disclosure on the Disclosures of Protected Health Information (PHI) (MSC 2097).

**Note**

Please refer to the booklet “What you can do about child abuse” (DHS 9061) for more information on reporting child abuse and mandatory reporting.

**Note on reporting alcohol and drug (A&D) information:**

- **Child abuse:** If necessary, A&D treatment information may be disclosed to Child Welfare in order to make an initial report of suspected abuse of a child. Any subsequent disclosure of A&D information would require a court order or a written authorization by the client;
- **Elder abuse or abuse of a person with a mental illness or developmental disability:** A&D treatment information may not be disclosed without authorization in order to report suspected elder abuse or abuse of a person with a mental illness or developmental disability. If it is necessary to make a report without authorization of suspected elder abuse or abuse of a person with a mental illness or developmental disability, the report may be made but must be done without revealing a person is in A&D treatment or has an A&D problem.
Note on reporting mental health information:

- **Child abuse**: While the reporting of child abuse is mandatory under law, mental health records are not required to be part of that reporting. Release of mental health records requires a court order or written authorization by the client;

- **Elder abuse or abuse of a person with a mental illness or developmental disability**: While the reporting of elder abuse and abuse of a person with a mental disability is mandatory under law, mental health records are not required to be part of that reporting. Release of mental health records requires a court order or written authorization by the client.

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**Uses and Disclosures of Client or Participant Protected Information Rule**

407-014-0020(2)(f) and (g) — Uses and Disclosures of Client or Participant Protected Information

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16. **Alcohol/drug (A&D) and mental health information**

Pursuant to federal A&D law and state mental health law, a client has the right to authorize use and disclosure of A&D or mental health treatment information to “DHS,” or to a specific program within DHS, such as Self-Sufficiency, or to a specific person (name or title).

A&D and mental health treatment information may be used only for the specific purpose listed on the *Authorization for Use and Disclosure of Information* (MSC 2099) form. A client has the right to informed consent when filling out the MSC 2099. This means the worker has told the client he or she may authorize the use of A&D and mental health information to “DHS” as a whole or may limit disclosure to a specific program such as to the Self-Sufficiency Program.

Federal A&D law prohibits unauthorized use, disclosure and re-disclosure of A&D treatment information. State mental health law prohibits unauthorized use, disclosure and re-disclosure of mental health information. These laws:

- Give a client the right to restrict to what entity or person and for what purpose treatment information may be used or disclosed;

- Require that the client’s right to limit use and disclosure of A&D and mental health information be communicated to the client;

- Prohibit re-disclosure of A&D and mental health treatment information without the specific authorization of the client;
• Allow a client to authorize use and disclosure of information by filling out and signing a release (such as the MSC 2099) that includes the:
  − Name of the person or program making the disclosure;
  − Name or title of the individual or organization to which disclosure is to be made;
  − Name of the client;
  − Purpose of the disclosure, which must be specific;
  − How much and what kind of information is to be disclosed.

**TRACS Narration of A&D/MH information:** The A&D/MH narrative is for information that is:

• From a treatment provider; and

• Related to a client’s A&D or MH diagnosis, prognosis or progress in treatment.

However, some A&D and MH information, such as that a client was referred for treatment, attended a treatment appointment or was referred for a urinalysis (UA), should still be narrated in the regular TRACS narrative.

In addition, client self-disclosure of A&D- or MH-related information should be narrated in the regular TRACS narrative.

Information in the A&D/MH narrative should be limited to the minimum necessary needed to communicate the client’s issues.

**Secure A&D/MH narrative versus a restricted A&D/MH narrative.**

Within the A&D/MH narrative there are two different levels of security. This means the worker entering the A&D/MH narrative will have to choose a level of security. The two levels of security are the secure A&D/MH narrative and the restricted A&D/MH narrative.

The secure A&D/MH narrative is used when a client authorizes their A&D or MH treatment information to be disclosed to an entity such as “DHS” or “Self-Sufficiency.” Authorization is given on the Authorization for Use and Disclosure of Information form (MSC 2099). The secure narrative is viewable by group’s assigned access. For example, an A&D/MH narrative that is viewable by all Self-Sufficiency case managers in District 3 is a secure A&D/MH narrative. It is anticipated that the vast majority of A&D/MH narratives that are entered will be secure A&D/MH narratives.

The restricted A&D/MH narrative is used when a client authorizes their A&D or MH treatment information to be disclosed to only a specific worker or workers in the
branch. (Authorization is given on the Authorization for Use and Disclosure of Information form (MSC 2099). For example, if a client wants their A&D treatment information to be disclosed to only their Self-Sufficiency case manager, the information must be entered into TRACS as a restricted A&D/MH narrative, which means that it will be viewable by only that case manager.

Secure and restricted narratives are to be used for A&D/MH information ONLY.

Sharing information across programs: Information that may be shared between programs within CAF without a signed release (not protected by 42 CFR) is:

- Observations of suspected substance abuse or mental health issues;

- Any information the agency obtains prior to the diagnosis and/or treatment of an individual that does not originate from the A&D provider. This includes the screening and/or referral for an assessment, including the name of the treatment provider conducting the assessment (even if that provider eventually provides treatment);

RESTRICTION

Any information obtained by the agency from the treatment provider at the point of or after diagnosis, including assessment, prognosis and treatment, referral for treatment or the name of the treatment provider, and including treatment attendance records, is protected and may not be shared without a properly executed release. However, information from the treatment provider that the client is a “no-show” for assessment or other nontreatment appointment arranged by DHS is not protected and may be shared without a release of information.

- Self-disclosed information about the existence of a substance abuse or mental health issue, including that client is receiving or has received treatment.

RESTRICTION

Any written records disclosed by the client (whether physically provided or read to the agency) that originated with a treatment provider are protected and may not be shared without a properly executed release.

Applicability to Mental Health records

Disclosure of A&D records is governed by 42 CFR Part 2. Disclosure of Mental Health records are governed by ORS 179.505. Because 42 CFR Part 2 is the more restrictive
regulation, and because in practice it is not practical to distinguish the different sharing limitations between these records, the more restrictive analysis applies to both A&D and Mental Health records.

Cross program use of A&D and mental health treatment information outside of the guidelines listed above will require a signed release of information by the client.

If A&D or mental health treatment information is used or disclosed more broadly than the client has authorized on the MSC 2099, the person using the information or making the disclosure may be in violation of federal or state law.

17. Domestic violence

Confidentiality is assumed in cases where domestic violence is a factor. Both the Code of Federal Regulations (45 CFR 260.52) and State statute (ORS 411.117) instruct the TANF program to keep information confidential about individuals experiencing domestic violence. Information shared should be limited to the minimum necessary and should not be shared without a signed release. The release should be clear about the specific information to be released, for what purposes and the time frames the release covers.

Information sharing with Child Welfare

Domestic Violence information, or information from which domestic violence can be inferred, may be shared by SSP with the CW program when there is a common case unless:

- Perpetrator works for CW;
  
  Protocol: SS Case worker reports information to their Program Manager for action; or

- Relatives of perpetrator work for CW;
  
  Protocol: SS Case worker reports information to their Program Manager for action; or

- Perpetrator has a close business relationship with CW, such as a program partner or contracted worker;
  
  Protocol: SS Case worker reports information to their Program Manager for action; or

- When DV victim affirmatively asks that information not be shared and the information in question does not otherwise trigger a mandatory report
  
  Protocol: SS Case worker discusses with DV victim the victim’s concerns about sharing and if needed, consults with their Program Manager to determine
whether information may be shared in a manner that protects the victim but still achieves the purpose for which it is shared.

**Disclosure of Client Information Rule**

461-105-0130 — Disclosure of Client Information

**Client Authorization for Release of Client Information to Third Party Rule**

461-105-0070 — Client Authorization for Release of Client Information to Third Party

**Access to information in the file:**

It is critical to be mindful of safety issues for clients who are in domestic violence situations. This applies to all self-sufficiency programs. If there is any likelihood that an abuser (family member or friend) may have access to the file, proceed with caution. Branch procedures might include keeping domestic violence/abuse information in a separate file or attached separately so that it can be easily removed. This separation would include the safety assessment (if used), the TA-DVS addendum (if used), any safety or case planning documents, and any information from domestic violence service providers.

In cases where the alleged abuser is no longer in the household, but is requesting information, remember that a person is only entitled to see information from the time he/she was a household member and an applicant or recipient. If you are required to share the narrative, remove any references to the abuse, address of the victim or services accessed before providing a copy to the alleged abuser. When printing a TRACS narrative, use a black felt marker to cross out any references to domestic violence before sharing the narrative.

**When it is safe to narrate:**

- Use the TRACS “DV” narrative type;
- Narrate what you actually see (Mary came in with a black eye and a broken tooth);
- Describe the client’s situation. Record the client’s description of what happened (Mary said, “My boyfriend got a little drunk and threw a bottle at me.”). What is the client afraid the abuser is likely to do?
- Narrate any history of abuse, abuser criminal history, other factors that might inform case planning efforts including abusers access to the victim or to weapons;
- If the client identifies the abuser as “boyfriend/girlfriend; wife/husband; roommate; family member” ask for the actual name and record it in TRACS. (Though this is not required for eligibility, unless there is question about relationship, it is important to record this information in case the abuser shows up at the office or the client reapplies for services);
• Document both financial and nonfinancial eligibility information including any TANF or TA-DVS requirements that were waived due to domestic violence;

• Narrate eligibility decisions and notice sent;

• Narrate payments made on behalf of the client;

• Document initial safety planning with the client (completion of the Self-Sufficiency Domestic Violence Assistance Agreement (DHS 1543)).

• Document any other information pertinent to working with the client or pertinent to the safety of the client, such as a child support or good cause determinations.

**NOTE**

It is important to avoid narrating graphic or disturbing information in detail, even if that is how the client reported it to you. The narrative should just include enough information to show the client would be eligible for services and/or to justify waiving TANF or TA-DVS requirements.

Do not narrate any reference to child abuse (See 15, above) but note referrals to child welfare.

**TRACS TA-DVS Eligibility and Assessment addendum:**

Treat the TRACS TA-DVS Eligibility and Assessment addendum and DVAA TRACS Narrative Supplemental as narratives. Do not use these online tools if the abuser is in the household or if the abuser (or abuser’s family member) works for DHS or a partner agency with access to TRACS.

**NOTE**

The TRACS TA-DVS Eligibility and Assessment addendum is available on the DV staff tools Web page at: [http://www.dhs.state.or.us/caf/dv/tools.htm](http://www.dhs.state.or.us/caf/dv/tools.htm).
Restricted and secured narrative

Do not narrate domestic violence-related information in the D&A/MH restricted or secure narrative. If safety concerns exist in adding information to the TRACS narrative, keep domestic violence-related information in the hard file marked “Confidential.”

If you are concerned about abuser access to a file, do not narrate in TRACS. Hand narrate the information and put it in an envelope marked confidential and “Do not disclose.”

Use of alternative identities on CMS and TRACS: In some cases you may have a client request use of an alternative identity or they may be going through a name change to protect their identity or location from an abuser.

You must have permission from your manager to use an alternative identity on the system. The manager or his/her designee needs to contact central office to authorize release of the procedure to code alternative identities.

When using an alternative identity, eligibility information (e.g., client identifying information, citizenship, relationship, social security numbers, Oregon residency, etc.) should be secured. A file containing the confidential information could be kept in the manager’s office, put in a separate folder marked confidential, kept in the hard file in an envelope marked “do not disclose” or otherwise protected. Check with your manager or DV point person to determine the process used in your branch.

Safety tools in the Child Support Program: There are two ways to address potential safety concerns and confidentiality in the child support program. If a client indicates it is not safe to pursue child support, we can grant good cause. DCS will take no actions to pursue paternity establishment, medical support or child support. If the client wants to pursue support but would like to protect information during pursuit, there is an additional tool. A client may request nondisclosure based on “Claim of Risk” which protects not only the client’s resident address but personal identifying information such as where the client works, their social security number, their driver’s license number and where the child attends school. These options are explained in the Client Safety Packet on Good Cause Version A (DHS 8660).

Clients Excused for Good Cause from Compliance with OAR 461-120-0340 and -0345 Rule

461-120-0350 — Clients Excused for Good Cause from Compliance with OAR 461-120-0340 and -0345

Address Confidentiality Program (ACP) through Department of Justice, Crime Victims’ Services Division: Is a program that provides a substitute address and mail forwarding for victims of domestic violence, sexual assault, stalking and human trafficking who have qualified for participation in the program. A participant in the program is given a card which will identify them as a participant. When presented with the identification card,
Self-Sufficiency and APD programs will not enter a resident address in the CMS or FSMS systems. Only the substitute address (ACP P.O. Box) that is shown on the I.D. card and participant I.D. number should be entered into our systems. The resident address will be kept in the hard file in an envelope marked confidential and should not be released to anyone without consultation with central office or the manager. See the ACP procedure guide on the DV staff tools Web page at: http://www.dhs.state.or.us/caf/dv/index.htm, under procedures.

Self-Sufficiency and APD Staff should be aware that:

- An additional five days should be allowed for sending notices requiring 10 days or less for service;
- For managed care enrollment, an out-of-area enrollment exception needs to be requested;
- For child care payments issued through the Direct Pay System, care that is provided by someone using the ACP PO Box, the maximum payment rates will default to Region A.

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People selected for the program have completed safety planning with a local domestic violence service provider or district attorney based victims’ assistance program. For further information about the program you can access their Web page at http://www.doj.state.or.us/victims/pages/index.aspx.

To apply for the program, the client should be referred to your local domestic violence and sexual assault service provider or the local crime victims’ assistance program through your local district attorney. The victim will work with an application assistant who can help them decide if the program is appropriate for them.

Other ways to protect information in domestic violence cases: There are several options available that victims may use to protect their address from being used in public records including voter’s registration, driver’s license and court proceedings. You can refer clients to the individual agencies to learn more information or to the local domestic violence service provider who may help the client plan around these options. Legal aid has information about confidentiality protections for victims of domestic violence, sexual assault and stalking on their Web page at www.oregonlawhelp.org.

**18. HIV/AIDS**

According to Oregon Revised Statutes 433.045(3), in no instance may a department employee reveal to any person or agency that a client is HIV positive (a person who is HIV positive has been exposed to the AIDS virus) without a written client authorization.
On the *Authorization for Use and Disclosure of Information* (**MSC 2099**) form, the authorization must specifically identify HIV test results in Section B and be initialed in the correct box below Section B.

Information on a client’s HIV status may not be included in the case record unless necessary to determine eligibility. Workers must judge whether a report containing information about HIV is needed to determine eligibility. If not, the information must be destroyed. If HIV information is needed for eligibility determination, the report should be retained, but marked with a notation that the information cannot be released to any person or agency.

Do not enter HIV status information into any shared communication system such as TRACS.

19. **When you receive a subpoena**

A subpoena is not a court order. A court order is signed by a judge. A subpoena is almost always signed by an attorney. The department must comply with a court order to provide testimony or documents unless the department is able to persuade a judge to amend or rescind the order. In response to a subpoena, the department must file written objections within 10 days or appear to present objections in court (or convince the attorney to drop the subpoena), but a subpoena alone does not require testimony or release of documents. If the time period to object to a subpoena is not waived, there must either be a court order or a valid written authorization from the client for the department to release documents or provide testimony.

How you respond to a subpoena will depend on what the subpoena is directing you to do.

- If the case record or worker is subpoenaed to appear before a judge, you should testify or release client information in the judicial proceeding if at least one of the following is true:

  (A) The proceedings are directly connected with administering a self-sufficiency program (except that release of information about substance abuse treatment and mental health still requires an authorization); or

  (B) The client has given a current and valid written authorization for release of specific information sought that covers both the purpose of the proceeding and those present in court; or

  (C) A judge directs you to provide the information.

If there is no valid client authorization and the proceeding is not about the self-sufficiency program, take a copy of the records requested and appear as directed by the subpoena. Give the presiding judge a copy of the state statutes that relate to the
confidentiality of client records. (ORS 411.300, 411.320, 411.335, as well as ORS 179.505 (behavioral health), ORS 411.117 (domestic violence), ORS 412.074 (TANF)).

### Release of Client Information to Service Providers and Legal Bodies Rule

461-105-0110 — Release of Client Information to Service Providers and Legal Bodies

SEE THE GENERIC PROGRAM INFORMATION CHAPTER OF THE FAMILY SERVICES MANUAL FOR MORE INFORMATION.

These statutes provide an explanation of the laws governing confidentiality of client information and let the judge know that we can provide the information if he or she orders us to do so. Testify only to the extent that the judge orders you to testify.

If a case record or a worker is subpoenaed and the subpoena directs the record or worker to provide documents or appear in a deposition or an attorney’s office or in an administrative hearing where a judge will not be present, do the following:

- Look at the date you are asked to appear or provide documents. If the subpoena gives the agency less than five working days to comply, contact the DHS Central Office subpoena liaison immediately and fax a copy of the subpoena to them at (503) 373-7032. You should also check the client file to see if the client has signed an authorization to release information to the attorney, and fax any releases that may apply. Note that a release in the file may not cover the scope or purpose of the request. If time permits, contact the attorney or agency that issued the subpoena. Explain that ORS 410.150, ORS 411.300, ORS 411.320, and ORS 411.335 prohibit the department from disclosing client information without the client’s written release. Ask that the subpoena be withdrawn and for brief written confirmation that the department is not required to comply with the command of the subpoena;

- If you cannot reach the attorney or the attorney is not willing to withdraw the subpoena, immediately contact the DHS Central Office subpoena liaison and fax a copy of the subpoena and any related authorizations to share information to the liaison at (503) 373-7032;

- The department may file written objections or seek to quash the subpoena, especially if only documents are requested. If only documents are requested, do not provide them in the absence of a court order or valid written, client authorization or specific direction from the Attorney General’s office (AG) contact or confidentiality analyst;

- If a subpoena for your testimony is not quashed, the person subpoenaed should appear as directed by the department’s AG contact or the subpoena liaison. You would bring any documents directed: however, actual testimony or release of documents at this hearing would still require a court order or valid, written authorization;
• If the worker or the case record is subpoenaed for a grand jury and the proceedings are not directly connected to administering the department’s programs, or the client has not given written authorization for the release of specific information, immediately contact the subpoena liaison. Fax a copy of the subpoena to them at (503) 373-7032.

20. Verification

In every situation in which information is shared, with or without an authorization, inside or outside of DHS, staff, volunteers and contractors are required to take reasonable steps to verify the identity of the individual receiving the information, unless the department workforce member fulfilling the request already knows the person or has already verified identity.

When releasing information to a client’s attorney without an Authorization for Use and Disclosure of Information (MSC 2099) form, staff must verify that the individual is an attorney. Instructions for how to do this are at: http://intranet.dhs.state.or.us/caf/.

If the person is not known to the DHS staff member fulfilling the request, take one of the following reasonable precautions to verify that the individual with whom staff is communicating is that same attorney:

• Ask to see an identification badge or driver license when the request is made in person;

• Conference call in another DHS employee who knows the attorney, will recognize the attorney’s voice, and can then verify identity;

• Ask for a phone number at the same location you can call back that will confirm you are communicating with a law firm or legal services;

• An e-mail from the attorney’s e-mail address that will serve to verify that the attorney is the person on the phone;

• The fax number or address to which you will send the documents is that of the attorney. You can confirm fax number on the Oregon State Bar website: http://www.osbar.org/members/start.asp;

• A fax from the attorney’s fax number that will serve to verify that the attorney is the person on the phone;

• Another reasonable approach.
21. **Forms and references**

**Forms**

- **MSC 2090**, *State of Oregon Department of Human Services Notice of Privacy Practices*
- **MSC 2093**, *Request for Access to Records*
- **MSC 2094**, *Request for Amendment of Health Record*
- **MSC 2095**, *Request for Restriction of Use and Disclosures*
- **MSC 2096**, *Request for Accounting of Disclosures of Health Records*
- **MSC 2097**, *Disclosures of Protected Health Information (PHI)*
- **MSC 2099**, *Authorization for Use and Disclosure of Information*

**References**

**DHS Policy**

- **DHS-100-001**, *General Privacy*
- **DHS-100-002**, *Client Privacy Rights*
- **DHS-100-003**, *Uses and Disclosures of Client or Participant Information*
- **DHS-100-004**, *Minimum Necessary Information*

**Oregon Administrative Rules**

- **407-014-0000**  
  (Definitions)
- **407-014-0020**  
  (Uses and Disclosures of Client or Participant Protected Information)
- **407-014-0030**  
  (Client Privacy Rights)
- **407-014-0040**  
  (Minimum Necessary Standards)
- **461-105-0060**  
  (Release of Information to the Client)
• **461-105-0070**  
  (Client Authorization for Release of Client Information to Third Party)

• **461-105-0100**  
  (Release of Client Information to Law Enforcement Officers)

• **461-105-0110**  
  (Release of Information to Service Providers and Legal Bodies)

• **461-105-0120**  
  (Release of Information on Child Support and Paternity Cases)

• **461-105-0130**  
  (Disclosure of Client Information)

Oregon Revised Statutes

• **179.505**  
  (Disclosure of written accounts by health care services provider)

• **124.050 - 124.095**  
  (Reporting of Abuse of Elderly Persons)

• **410.150**  
  (Use of files; confidentiality; privileged communications)

• **411.117**  
  (Requirements when applicants or recipients victims of domestic violence; identification)

• **411.320**  
  (Disclosure and use of public assistance records limited; contents as privileged communication, exceptions)

• **412.074**  
  (Use and custody of records of temporary assistance for needy families program; rules)

• **412.094**  
  (Public officials to cooperate in locating and furnishing information concerning parents of children receiving or applying to receive public assistance and in prosecuting nonsupport cases; use of information restricted)

• **419B.005 - 419B.045**  
  (Reporting of Child Abuse)

• **430.735 - 430.765**  
  (Abuse Reporting for Adults with Mental or Developmental Disabilities)

Federal Law

• **7 CFR 272.1**

• **42 CFR Part 2**

• **45 CFR Part 164.522 - 164.528**