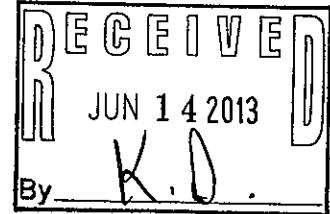




Arkansas Department of Human Services Division of Children and Family Services

700 Main Street, Donaghey Plaza South, 5th Floor
P.O. Box 1437, Slot S560
Little Rock, Arkansas 72203-1437
Telephone (501) 682-8008 TDD (501) 682-1442 FAX (501) 682-6968

June 14, 2013



Varnaria Vickers-Smith, Legislative Analyst
Senate Interim Children and Youth Committee and the
House Aging, Children and Youth, Legislative and Military Affairs Committee
Arkansas Bureau of Legislative Research
One Capital Mall, 5th Floor, Room R-516
Little Rock, AR 72201

RE: Initial Filing - Regular Promulgation

Dear Ms. Vickers-Smith:

Please place the Division of Children & Family Services on the Children & Youth Committee agenda for review of the Rules as listed on the Questionnaire. The public comment period is from June 14, 2013 to July 13, 2013, with an effective date of August 19, 2013.

Enclosed are copies of the Questionnaire, Summary of Changes, Financial Impact Statement and Rule.

If you have any questions or comments, please contact Christin Harper, Policy & Professional Development Administrator, Division of Children and Family Services, P.O. Box 1437, (Slot S570), Little Rock, Arkansas 72203-1437; phone 682-8541; email christin.harper@arkansas.gov or fax 682-6968.

Sincerely,

A handwritten signature in cursive script that reads "Cecile Blucker".
Cecile Blucker

Director, Division of Children and Family Services

BUREAU OF LEGISLATIVE RESEARCH

DEPARTMENT OF HUMAN SERVICES
Division of Children and Family Services
AMENDING ADMINISTRATIVE REGULATIONS

TITLE:

Revised Rule

- POLICY I-F: CONFIDENTIALITY

PROPOSED EFFECTIVE DATE: August 19, 2013

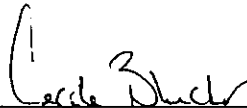
STATUTORY AUTHORITY: A.C.A. § 9-28-103

NECESSITY AND FUNCTION:

Revised Rule

- POLICY I-F: CONFIDENTIALITY
 - Revised to allow certain information pertaining to protective and foster cases to be released to a child fatality review panel as authorized by DHS per Act 1275 of the 89th General Assembly, Regular Session 2013
 - Clarifies data, records, reports, or documents released are confidential and shall be sealed and not redisclosed without a protective order per Act 1275 of the 89th General Assembly, Regular Session 2013

PAGES FILED:



Signature

Name: Cecile Blucker

Title: Director

Section: Division of Children and Family Services

Department of Human Services

PROMULGATION DATES: June 14-July 13, 2013

CONTACT PERSON: Christin Harper
DHS-DCFS Policy Unit
Phone: (501) 682-8541
Fax: (501) 683-4854
Email: christin.harper@arkansas.gov

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

DEPARTMENT/AGENCY Department of Human Services
 DIVISION Division of Children and Family Services
 DIVISION DIRECTOR Cecile Blucker
 CONTACT PERSON Christin Harper, Policy & Professional Development Administrator
 ADDRESS P. O. Box 1437, Slot S570, Little Rock, AR 72203-1437
 PHONE NO. (501) 682-8541 FAX NO. (501) 683-4854 E-MAIL christin.harper@arkansas.gov
 NAME OF PRESENTER AT COMMITTEE MEETING Christin Harper
 PRESENTER E-MAIL christin.harper@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
 Administrative Rules Review Section
 Arkansas Legislative Council
 Bureau of Legislative Research
 Room 315, State Capitol
 Little Rock, AR 72201

1. What is the short title of this rule? Revisions to Confidentiality Policy

Revised Confidentiality Policy to allow release of certain information to child death fatality review panel and require protective order before redisclosure to comply with ActAct 1275 of the 89th General Assembly, Regular Session 2013

2. What is the subject of the proposed rule? _____

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
 If yes, please provide the federal rule, regulation, and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes

No

5. Is this a new rule?

Yes

No

If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule?

Yes

No

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule?

Yes

No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule?

If codified, please give Arkansas Code citation.

A.C.A. § 9-28-103

7. What is the purpose of this proposed rule? Why is it necessary?

Revised Rule:

- POLICY I-F: CONFIDENTIALITY

- o Revised to allow certain information pertaining to protective and foster cases to be released to a child fatality review panel as authorized by DHS per Act 1275 of the 89th General Assembly, Regular Session 2013
- o Clarifies data, records, reports, or documents released are confidential and shall be sealed and not redisclosed without a protective order per Act 1275 of the 89th General Assembly, Regular Session 2013

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

AR Secretary of State Website

DHS/DCFS CHRIS public:

<https://ardhs.sharepointsite.net/CW/Notice%20of%20Rule%20Making/Forms/AllItems.aspx>

9. Will a public hearing be held on this proposed rule?

Yes

No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

July 13, 2013

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

August 19, 2013

12. Do you expect this rule to be controversial?

Yes

No

If yes, please explain. _____

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

We do not know of any specific groups of persons who would comment.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services
DIVISION Division of Children and Family Services
PERSON COMPLETING THIS STATEMENT Greg Crawford
TELEPHONE NO. (501) 682-6248 **FAX NO.** (501)682-6968 **EMAIL:** greg.crawford@arkansas.gov

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Confidentiality

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Does this proposed, amended, or repealed rule affect small businesses? Yes No
If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____
Total \$0 _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____
Total \$0 _____

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ 0 _____

Next Fiscal Year

\$ 0 _____

6. What is the total estimated cost by fiscal year to the agency to implement this rule? Is this the cost of the program or grant? Please explain.

Current Fiscal Year

\$ 0 _____

Next Fiscal Year

\$ 0 _____

DCFS SUMMARY OF CHANGES FOR JUNE 2013 PROMULGATION

SUMMARY OF DCFS REGULAR PROMULGATION

The purpose of this regular promulgation is to revise policies to allow certain information pertaining to protective and foster cases to be released to a child fatality review panel as authorized by DHS per Act 1275 of the 89th General Assembly, Regular Session 2013, and to clarify that data, records, reports, or documents released are confidential and shall be sealed and not re-disclosed without a protective order per Act 1275 of the 89th General Assembly, Regular Session 2013.

POLICY I-F: CONFIDENTIALITY

048/2013

The Division of Children and Family Services is committed to best practice in relation to respecting client confidentiality. Information is confidential if it is not intended to be disclosed to persons other than those to whom disclosure is allowed under the statute. All employees of the Division shall maintain the confidentiality of children and families served by DCFS. Confidentiality applies to verbal, written and/or electronic transmittal of information including information in CHRIS.

No DCFS employee may accept employment or engage in any activity while serving as a DCFS employee, which might reasonably be expected to require or induce the employee to disclose confidential information. In addition, no DCFS employee may disclose confidential information or use confidential information for the gain or benefit of the employee or person in a close, personal relationship to the employee.

Reports, correspondence, memoranda, case histories, or other materials related to protective services and foster care records, shall be confidential and shall not be released or otherwise made available, except to the extent permitted by federal and state law and only as listed below. This includes protected health information compiled or received by a licensee or a state agency engaged in placing a child.

- A. To the director as required by regulation;
- B. For adoptive placements, as provided by the Revised Uniform Adoption Act, § 9-9-201 et seq.;
- C. To multidisciplinary teams;
- D. To the child's custodial/non-custodial parent(s), guardian, or custodian. However, the licensee or state agency may redact information from the record such as the name or address of foster parents or providers when it is in the best interest of the child. The licensee or state agency shall redact counseling records, psychological or psychiatric evaluations, examinations or records, drug screens or drug evaluations, or similar information concerning a parent if the other parent is requesting a copy of a record;
- E. To the child;
- F. To health care providers to assist in the care and treatment of the child at the discretion of the licensee or state agency and if deemed to be in the best interest of the child. Health care providers include doctors, nurses, emergency medical technicians, counselors, therapists, mental health professionals, and dentists;
- G. To school personnel and child care centers caring for the child at the discretion of the licensee or state agency and if deemed to be in the best interest of the child;
- H. To foster parents, the foster care record for children in foster care currently placed in their home. However, information about the parents or guardians and any siblings not in the foster home shall not be released (See Policy VII-H: Providing Information to Foster Parents);
- I. To the Child Welfare Agency Review Board. However, at any board meeting no information which identifies by name or address any protective services recipient or foster care child shall be orally disclosed or released in written form to the general public;
- J. To the Division of Children and Family Services, including child welfare agency licensing specialists;
- K. For any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity;
- L. Upon presentation of an order of appointment, to a court-appointed special advocate;
- M. To the attorney ad litem for the child;
- N. For law enforcement or the prosecuting attorney upon request;
- O. To circuit courts, as provided for in the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;
- P. In a criminal or civil proceeding conducted in connection with the administration of any such plan or program;
- Q. For purposes directly connected with the administration of any of the state plans as outlined;
- R. For the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need; or

EXCERPT: POLICY I-F

- S. To individual federal and state representatives and senators in their official capacity, and their staff members, with no re-disclosure of information. No disclosure shall be made to any committee or legislative body of any information which identifies by name or address any recipient of services; or
- T. To a grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury.
- U. To a person, provider, or government entity identified by the licensee or the state agency as having services needed by the child or his/her family; or
- V. To volunteers authorized by the licensee or the state agency to provide support or services to the child or his/her family at the discretion of the licensee or the state agency and only to the extent information is needed to provide the support or services.
- W. To a person, agency, or organization engaged in a bona fide research or evaluation project that is determined by the Division to have value for the evaluation or development of policies and programs within DCFS. Any confidential information provided for a research or evaluation project shall not be re-disclosed or published.

W.X. To a child fatality review panel as authorized by the Department of Human Services.

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Any data, records, or documents described above that are released to a law enforcement agency, the prosecuting attorney, or a court by the Department of Human Services are confidential and shall be sealed and not re-disclosed without a protective order to ensure that items of evidence for which there is a reasonable expectation of privacy are not distributed to persons or institutions without a legitimate interest in the evidence.

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POLICY I-F: CONFIDENTIALITY

08/2013

The Division of Children and Family Services is committed to best practice in relation to respecting client confidentiality. Information is confidential if it is not intended to be disclosed to persons other than those to whom disclosure is allowed under the statute. All employees of the Division shall maintain the confidentiality of children and families served by DCFS. Confidentiality applies to verbal, written and/or electronic transmittal of information including information in CHRIS.

No DCFS employee may accept employment or engage in any activity while serving as a DCFS employee, which might reasonably be expected to require or induce the employee to disclose confidential information. In addition, no DCFS employee may disclose confidential information or use confidential information for the gain or benefit of the employee or person in a close, personal relationship to the employee.

Reports, correspondence, memoranda, case histories, or other materials related to protective services and foster care records, shall be confidential and shall not be released or otherwise made available, except to the extent permitted by federal and state law and only as listed below. This includes protected health information compiled or received by a licensee or a state agency engaged in placing a child.

- A. To the director as required by regulation;
- B. For adoptive placements, as provided by the Revised Uniform Adoption Act, § 9-9-201 et seq.;
- C. To multidisciplinary teams;
- D. To the child's custodial/non-custodial parent(s), guardian, or custodian. However, the licensee or state agency may redact information from the record such as the name or address of foster parents or providers when it is in the best interest of the child. The licensee or state agency shall redact counseling records, psychological or psychiatric evaluations, examinations or records, drug screens or drug evaluations, or similar information concerning a parent if the other parent is requesting a copy of a record;
- E. To the child;
- F. To health care providers to assist in the care and treatment of the child at the discretion of the licensee or state agency and if deemed to be in the best interest of the child. Health care providers include doctors, nurses, emergency medical technicians, counselors, therapists, mental health professionals, and dentists;
- G. To school personnel and child care centers caring for the child at the discretion of the licensee or state agency and if deemed to be in the best interest of the child;
- H. To foster parents, the foster care record for children in foster care currently placed in their home. However, information about the parents or guardians and any siblings not in the foster home shall not be released (see Policy VII-H: Providing Information to Foster Parents);
- I. To the Child Welfare Agency Review Board. However, at any board meeting no information which identifies by name or address any protective services recipient or foster care child shall be orally disclosed or released in written form to the general public;
- J. To the Division of Children and Family Services, including child welfare agency licensing specialists;
- K. For any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity;
- L. Upon presentation of an order of appointment, to a court-appointed special advocate;
- M. To the attorney ad litem for the child;
- N. For law enforcement or the prosecuting attorney upon request;
- O. To circuit courts, as provided for in the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;
- P. In a criminal or civil proceeding conducted in connection with the administration of any such plan or program;
- Q. For purposes directly connected with the administration of any of the state plans as outlined;
- R. For the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need; or

EXCERPT: POLICY I-F

- S. To individual federal and state representatives and senators in their official capacity, and their staff members, with no re-disclosure of information. No disclosure shall be made to any committee or legislative body of any information which identifies by name or address any recipient of services; or
- T. To a grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury.
- U. To a person, provider, or government entity identified by the licensee or the state agency as having services needed by the child or his/her family; or
- V. To volunteers authorized by the licensee or the state agency to provide support or services to the child or his/her family at the discretion of the licensee or the state agency and only to the extent information is needed to provide the support or services.
- W. To a person, agency, or organization engaged in a bona fide research or evaluation project that is determined by the Division to have value for the evaluation or development of policies and programs within DCFS. Any confidential information provided for a research or evaluation project shall not be re-disclosed or published.
- X. To a child fatality review panel as authorized by the Department of Human Services.

Any data, records, or documents described above that are released to a law enforcement agency, the prosecuting attorney, or a court by the Department of Human Services are confidential and shall be sealed and not re-disclosed without a protective order to ensure that items of evidence for which there is a reasonable expectation of privacy are not distributed to persons or institutions without a legitimate interest in the evidence.