


STATE OF VERMONT Agency of Human Services (AHS)		
Request for Consumer Records by a third party	REVISION HISTORY: New	Chapter/Number 6.02
	EFFECTIVE DATE: 2/3/2010	Attachments/Related Documents:
Authorizing Signature: 	Date Signed: 2/3/2010	
Robert Hofmann, Secretary		

PURPOSE/POLICY STATEMENT

The Agency of Human Services (AHS) will furnish consumer records in a courteous and timely fashion and as required by law.

BACKGROUND and REFERENCE:

Record requests for consumer records arise in several ways. Such requests may be made by (1) the consumer, (2) the consumer's representative for the consumer's own records, (3) a public records request or (4) a litigation request for records. This policy addresses consumer requests and not public records requests which are the subject of Policy No. 6.01.

It is important that an AHS employee who receives a request contact his or her supervisor or the department's attorney when a request for records is received. Before AHS responds to a request, it is necessary to determine the nature of the sought after records. The records may contain protected health or other confidential information or may be records that are sought in connection with a pending or prospective court case. Depending on the type of record, different responses are necessary.

SCOPE:

This document applies to all departments, divisions and offices hereafter referred to jointly as "department".

GUIDELINES:

Consumer Medical, Mental Health, or Substance Abuse Treatment Records

Requests for Medical or Mental Health records should be directed to the designated clinical services division, legal counsel and/or the privacy officer or Health Insurance Portability and Accountability Act (HIPAA) liaison in the department or division.

- a. Consumer medical or mental health treatment records requested by someone other than the consumer will not be provided without a signed document from the consumer, consumer guardian or a court order. Please see AHS HIPAA guidelines for access to protected health information.
- b. Under no circumstances should medical or mental health records be provided except at the direction of the division/staff or legal counsel responsible for clinical services. Note: This includes acknowledging the mere existence of such records.

Other Records

If the request is from someone other than the consumer, a signed document from the consumer, guardian or court order may be required. (Check with legal counsel for the department, division or office.)

- a. Depending on the nature of the documents the requesting party is seeking, it may be necessary for the Department to remove certain information. This redaction may include information about persons other than the person named in the request or the name of a confidential informant or other criminal justice information that, if released, may present a security or public safety concern. This is not a complete list.
  - Instructions and guidance on screening documents for confidential, security or other restricted information will be provided as needed by the department's legal counsel.

### General Considerations /

It is important to note that the Agency must comply with state and federal confidential laws. Staff should attend periodic trainings on records and information sharing and should check with supervisors and the department's legal counsel to learn if state or federal law has changed regarding the handling of the records in their custody. Staff should also check the Agency's intranet site for instructions pertaining to HIPAA and other privacy laws. If a staff person has a concern about the release of information, he or she should check with a supervisor or legal counsel. Once something is disclosed, it cannot be taken back.

- a. Some items may be requested but are *confidential*. They should never be disclosed without explicit instruction from the legal division to do so.
- b. As indicated above, medical or treatment records involving either mental health or substance abuse information are especially confidential. Do not acknowledge that they even exist without explicit permission.

If an individual shows up at the workplace asking to see documents that they have not previously requested, do not provide them absent verification provided by legal counsel. State law is designed to maintain the balance between disclosure and confidentiality. Note: *This applies to all parties, including attorneys and the police.*

Maintain a record of all communication with the requesting party.

When in doubt, seek assistance from a supervisor and/or department legal counsel.

Legal counsel may be available to advise staff in searching for and screening documents. However, under normal circumstances, the collection and preparation of documents *cannot* be performed by any member of the legal division.

### Provision of Records

18 VSA § 9419, Charges for access to medical records, provides that "a custodian may impose a charge that is no more than a flat \$5.00 fee or no more than \$0.50 per page, whichever is greater, for providing copies of an individual's health care record." The statute also provides: "A custodian shall not charge for providing copies of any health care record requested to support a claim or an appeal under any provision of the Social Security Act or for any other federal or state needs-based benefit, or program."

### COMPLIANCE

It is the responsibility of the individual departments to ensure dissemination and review of this policy to all employees within their organizations and other associates as appropriate.

### ENFORCEMENT

The Office of the Secretary may initiate reviews, assessments or other means to ensure that this policy is being followed.