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POLICY TRANSMITTAL NO. 08-59	DATE: DECEMBER 1, 2008
FAMILY SUPPORT SERVICES DIVISION	DEPARTMENT OF HUMAN SERVICES OFFICE OF LEGISLATIVE RELATIONS AND POLICY

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TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:65-1-2.

EXPLANATION: OAC 340:65-1-2 Instructions to staff are revised to: (1) require staff to obtain approval from the county director before removing a case record or part of a case record from the human services center; (2) give reasons why permission might be granted; (3) explain what controls must be in place to safeguard confidential information and how to locate a case record that has been removed; and (4) update language to current terminology.

Original signed on 11-25-08

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Mary Stalnaker, Director  
Family Support Services Division

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WF # 08-DD (NAP)

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## **INSTRUCTIONS FOR FILING MANUAL MATERIAL**

OAC is the acronym for Oklahoma Administrative Code. If OAC appears before a number on an Appendix or before a Section in text, it means the Appendix or text contains rules or administrative law. Lengthy internal policies and procedures have the same Chapter number as the OAC Chapter to which they pertain following an "OKDHS" number, such as personnel policy at OKDHS:2-1 and personnel rules at OAC 340:2-1. The "340" is the Title number that designates OKDHS as the rulemaking agency; the "2" specifies the Chapter number; and the "1" specifies the Subchapter number.

The chronological order for filing manual material is: (1) OAC 340 by designated Chapter and Subchapter number; (2) if applicable, OKDHS numbered text for the designated Chapter and Subchapter; and (3) all OAC Appendices with the designated Chapter number. For example, the order for filing personnel policy is OAC 340:2-1, OKDHS:2-1, and OAC 340:2 Appendices behind all Chapter 2 manual material. Any questions or assistance with filing manual material will be addressed by contacting Policy Management Unit staff at 405-521-4326.

### **REMOVE**

340:65-1-2

### **INSERT**

340:65-1-2, pages 1-7, revised 12-1-08

**340:65-1-2. Confidential nature of case material**

Revised 7-1-01

(a) **Legal basis.** DHS maintains the confidentiality of all applications, information, and records concerning any applicant or recipient in accordance with the Oklahoma Social Security Act and the Federal Social Security Act.

(b) **Custody of records.** All case information including electronic data procured by, or available to, any staff member of the Department is the property of the Department and is used by staff only in accordance with the provisions of the law and the policies adopted by the Department.

(1) **Authority to disclose information.** The county director is responsible for the custody of records in the county office and for their proper use. All requests for information from a record of the Department are referred to the county director, except in those instances where the request originates within the Department in carrying out its regular functions. Staff members of each of the operating divisions of the Department have access to records of the other divisions so that a mutual exchange of information, on the same family or related to a case under care, may be constructive. ■ 1

(2) **Nature of information to be safeguarded.** Except as provided in this subsection, information which must be safeguarded includes:

(A) names and addresses, including lists;

(B) information contained in an application;

(C) reports of investigations;

(D) medical data which includes but is not limited to diagnosis and past history of disease and disability;

(E) correspondence and other records concerning the condition or circumstances of any person from whom or about whom information is obtained, regardless of whether it is recorded;

(F) evaluations of such information;

(G) warrant registers;

(H) all data items available on computer screens. Disclosure to any unauthorized person is a violation of federal and state agency regulations. Persons considered to be authorized are the client, authorized representative, Agency staff, authorized volunteers, and staff of outside agencies with a contract or agreement allowing access to specific data; and

(I) raw tax data which is any written, typed, photocopied, or printout of information from the Income Eligibility Verification System-Internal Revenue Service (IEVS-IRS), Beneficiary and Earnings Data Exchange System (BENDEX), and Beneficiary Earnings Exchange Record (BEER). Raw tax data may include the client's name, Social Security number, Internal Revenue Service (IRS) reporting firm, company, political subdivision, state agency account number, type of income, and the amount of income or resource. ■ 2

**(3) Nature of information to be made available.** General information not identified with any particular individual or group of individuals, such as total expenditures made, number of recipients, and other statistical information and social data contained in reports or surveys do not fall within the type of material to be safeguarded.

(A) Requested information is released to representatives of agencies which are authorized, by law, to have the information. Information may be released to other agencies only when they give assurance that the:

(i) confidential character of the information will be preserved;

(ii) information will be used only for purposes related to the administration of the assistance program and the functioning of the inquiring agencies; and

(iii) standards of protection established by the agency to which information is disclosed are equal to those established by the Department, both in regard to the use of the information by the staff and the provision of protective procedures.

(B) Addresses of recipients can be disclosed to federal, state, and local law enforcement officers who furnish the recipient's name, Social Security number, and notify the Department that the location or apprehension of the recipient is within their official duties and that the recipient is:

(i) a fugitive felon who is fleeing to avoid prosecution, custody, or confinement after conviction; or

(ii) violating a condition of probation or parole.

(C) The days and hours approved for Child Care Program services can be disclosed to child care providers.

(D) Upon written request, information used to establish eligibility that is not otherwise protected by law is made available to the client or the client's representative during normal business hours. Confidential information, including the names of individuals who have disclosed information about the client without the client's knowledge and the nature or status of pending criminal prosecutions is withheld.

(E) Information obtained by the social service specialist from collateral sources, other than public records or the social service specialist's written evaluation of the client's situation, cannot be made available to the client or to any other person without the consent of the person who gave the information. Prior to a fair hearing, the county office is responsible for supplying the client with a copy of the written summary, documents, and other records which the county will present at the hearing. [OAC 340:2-5]

**(4) Release of information at request of client.** If the client or the client's representative requests the Department make available to him, her, or to other persons, courts, or agencies, certain information which he or she has given the Agency regarding himself or herself, it is proper to do so, provided the release is to the designated persons and the material is related to the specific subject involved. A written inquiry from an interested person, accompanied by the client's request to him or her, is considered sufficient to identify the person as the authorized representative of the client and information may be furnished. If a letter of inquiry does not conclusively show that the person making inquiry has been asked to obtain such information in behalf of the client, no action is taken without ascertaining the client's wishes in the matter.

**(5) Release of information to courts.** Information about the client in his or her record is made available in court proceedings only upon subpoena, except upon request by court officials in cases of abandonment and desertion, neglect of children, or restitution when such cases have been referred to the court by the Department. In either situation the Department's testimony is limited to material affecting the administration of the public assistance law except when participating in a case requested by the client or his or her representative in which his or her personal interests are at stake. When an employee of the Department is subpoenaed by the court for the purpose of giving testimony based upon Department records, the county director confers with the district attorney regarding

recognition by the court of the right of the Department under the law to protect its records, and of the confidential character of information made available to the Department in the process of administering assistance. If there is reason to believe that the court will not respect the confidential character of the Department's records, the county director communicates immediately with the Family Support Services Division (FSSD) regarding the steps to be taken. [DHS:2-25-10]

**(6) Release of information to the district attorney.** Information is released to the district attorney, as necessary, to carry out Agency policy regarding support from an absent parent. In every instance, the relative making application for TANF is informed of the requirement for obtaining support from an absent parent.

**(7) Release of medical information.** Medical information paid for by the Department is not released, even at the request of the individual to whom it pertains, except to another agency to which the individual has applied for services having the objective of protecting or advancing his or her welfare. However, there is nothing in Oklahoma law or federal law to prevent a physician from releasing medical information to his or her patient or an authorized representative of the patient. The physician, in such instances, is governed by the physician-patient relationship. ■ 3

(A) The DHS Legal Unit is responsible for determining whether the particular medical information being requested may be released under federal regulations and Department policies. When such clearance has been made, the DHS Legal Unit notifies FSSD. FSSD contacts the county office regarding the action to take.

(B) Medical information that a county office has obtained from the Veterans Administration or from the Social Security Administration cannot be released to anyone outside the Department.

(C) When a client requests a hearing on a medical decision, all medical records or reports except for psychological and psychiatric records, which were considered in establishing the medical decision, are provided to the client or authorized representative at a reasonable time before the date of the hearing. Copies of psychological and psychiatric records are not made available unless the release of these records is consented to by the treating physician or practitioner or are ordered released by a court of competent jurisdiction upon a finding that it is in the best interest of a patient.

## **INSTRUCTIONS TO STAFF 340:65-1-2**

**Revised 12-1-08**

**1. Case records must remain in the local human services center (HSC) unless approval is received from the county director to remove a case record to another designated location. The county director may delegate the authority for permission to remove a case record to the worker's supervisor.**

**(1) Circumstances when it may be permissible to remove a case record include:**

**(A) staff from another division within the Oklahoma Department of Human Services (OKDHS) requests the case record for use in a criminal or administrative investigation or to review the record for other OKDHS official business;**

**(B) a court issues a subpoena for the case record to be brought to court; or**

**(C) the worker receives permission to work offsite at home or another designated location and supervisory staff are aware that the case record has been removed from the HSC.**

**(2) When permission to remove the case record has been granted, the worker or other designated HSC staff must record on a paper or electronic log that is accessible to the entire office:**

**(A) the case name;**

**(B) the case number;**

**(C) the date the case record was removed from the HSC;**

**(D) why it was removed;**

**(E) where the case record can be located while it is out of the HSC; and**

**(F) the date it is returned to the HSC.**

**(3) Case records removed from the HSC in order for the worker to work offsite at home or another designated location must be stored in a secure and locked location such as a filing cabinet or lockbox. Prior to permission being given to remove a case record from the HSC for this reason, the supervisor must discuss with the worker how the case record**

will be safeguarded against confidential information being accessed by others.

(A) To make a decision whether to remove the entire case record or only parts of the record from the HSC, it must be determined:

(i) which documents are necessary to complete the work being performed offsite; and

(ii) how the worker will secure the case record offsite when not in use.

(B) When the entire case record is not removed from the HSC, it must be determined how the worker will ensure documents from different case records are always returned to the correct case record.

**2. Any record containing raw tax data or information must be secured in a storage area, such as a locked desk or file cabinet. At no time is raw tax data left on a desk, file cabinet, work area, or any other location even when the employee is away from the desk or work area for a short period of time.**

**(1) Provisions of Section 7213 of the Internal Revenue Code (IRC) make willful, unauthorized disclosure of federal returns or return information a felony punishable by a fine not exceeding \$5,000 or imprisonment of not more than five years, or both, together with the costs of prosecution and dismissal from office or discharge from employment.**

**(2) Provisions of Section 7213A of the IRC, the Taxpayer Browsing Protection Act, make unauthorized inspection of returns or return information a misdemeanor punishable by a fine not exceeding \$1,000 or imprisonment of not more than one year, or both, together with the cost of prosecution and dismissal from office or discharge from employment.**

**(3) Provisions of Section 7431 of the IRC permit a taxpayer to bring suit for civil damages for unauthorized disclosure of returns or return information in the amount equal to the sum of the greater of \$1,000 for each act or the sum of the actual damages sustained plus the cost of the action.**

**3. When the HSC receives requests for medical information that is not defined in OAC 340:65-1-2, HSC staff contacts the Family Support Services Division, Health Related and Medical Services Section (HRMS) and outlines the details**

**of the request. If a legal opinion is necessary, the HRMS supervisor makes a referral to the Legal Division and advises HSC staff of what action to take.**