
CONFIDENTIALITY

**MA-3500 CONFIDENTIALITY
REVISED 04/01/2009 – CHANGE NO. 04-09**

I. INTRODUCTION

North Carolina General Statutes state that it is unlawful for any person to obtain, disclose or use, or authorize, permit, or acquiesce in the use of any list of names or other information concerning individuals applying for or receiving public assistance or social services that may be directly or indirectly derived from the client's records, except for purposes directly connected with the administration of programs of public assistance and social services. Examine subpoenas, court orders and other requests for information from the client's Medicaid eligibility case record to protect client confidentiality. Court orders and/or subpoenas are acceptable only if signed by a judge.

County agencies receive requests for information regarding Medicaid clients from various individuals and agencies including county, state and federal law enforcement officers. No information may be released from the client's eligibility record that identifies a specific applicant/recipient except for purposes directly connected with the administration of programs of public assistance and social services.

II. REQUIREMENTS

Federal and state laws require states to provide safeguards to restrict the use or disclosure of information concerning Medicaid applicants and recipients. No information may be released from the client's eligibility record that identifies a specific applicant/recipient except for purposes directly connected with the administration of programs of public assistance and social services. These programs are: Work First (WF), Special Assistance (SA), Food and Nutrition Services (FNS), Medicaid, and Foster Care and Adoption Payment Services.

A. Purposes directly related to the administration of the programs include:

1. Establishing eligibility;
2. Determining the amount of assistance;
3. Providing services to recipients of social services, including transportation for Medicaid covered services;
4. Conducting or assisting in an investigation, prosecution and civil or criminal proceedings related to the programs.

CONFIDENTIALITY

REVISED 04/01/2009 – CHANGE NO. 04-09

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B. Information Not Considered Confidential

County and state agencies may release general information to anyone requesting it if the information does not identify specific clients. Examples of information that is not confidential include:

1. Non-identifying statistical information, such as number of Medicaid recipients in a county, or average expenditures per recipient in a specific category.
2. General information about the scope of any programs administered by the Division of Medical Assistance (DMA), such as covered services or managed care options.
3. Written policy relevant to the administration of the Medicaid program, such as Medicaid eligibility policy manuals.

III. DEFINITIONS

A. Client

"Client" means any applicant for, or recipient of Medicaid, or someone who makes inquiries, is interviewed, or has been otherwise served.

B. Client Information or Client Record

"Client information" or "Client record" means any information, including information stored in computer data banks or computer files, relating to the Medicaid eligibility in the Medicaid eligibility case record.

C. Court Order

"Court order" for purposes of confidentiality, means any written order signed by a judge that explicitly directs the release of client information from the Medicaid eligibility case files.

D. "Representative" means a person who is acting on behalf of the applicant/recipient.

E. Authorized Representative

"Authorized Representative" means any individual who is legally authorized or designated in writing by the applicant/recipient (a/r) to act on behalf of the applicant/recipient.

CONFIDENTIALITY

REVISED 10/01/11 – CHANGE NO. 17-11

IV. OWNERSHIP OF RECORDS

A. Ownership

All client files are the property of the county social services agency, and employees of the agency must safeguard the confidentiality of information in the files. **The requirement that the confidentiality of client information be safeguarded applies regardless of whether the caseworker is working in the agency or at home.**

B. Storage and Access

The agency must provide a secure place or places with controlled access for the storage of records. Only individuals who must access client information in order to carry out assigned duties or who are approved by the agency shall have access to the record storage areas. Only authorized individuals may remove a client record from the storage area. The authorized individual is responsible for the security of the record until it is returned to the storage area.

C. Security

The agency is responsible for establishing security procedures to prevent unauthorized disclosure of client information from automated systems. The county dss director is responsible for ensuring that all authorized individuals are informed of the confidential nature of client information and that training is provided for all persons with access to client information.

D. Non-Employee Access

Volunteers, interns and contract employees are treated the same as county dss employees for the purposes of confidentiality and security of records.

V. CLIENT ACCESS AND RELEASE OF INFORMATION

A. For purposes of access to client information in the county dss, the applicant/recipient is:

1. The individual who is the applicant/recipient
2. The parent/legal guardian of a minor applicant/recipient

NOTE: A non-custodial parent has the same legal access to the child's eligibility record as the custodial parent. However, if releasing information to a non-custodial parent appears to pose a threat to the safety and well-being of the child, the county dss should contact their county attorney for assistance.

CONFIDENTIALITY**REVISED 10/01/11 – CHANGE NO. 17-11**

(V.A.)

3. Court appointed guardian of a mentally incompetent applicant/recipient
4. Duly appointed executor for a deceased applicant/recipient
5. Guardian Ad Litem of an applicant/recipient
6. Any representative authorized in writing by the applicant/recipient to have access to the applicant/recipient's file. The applicant/recipient must state the name of the representative, give right to access, sign and date the statement. If the client is a minor in the custody of the Department of Social Services, the DSS may give consent. See [DMA-5018, Designation of Authorized Representative](#), for a suggested form.

B. Right to Access

1. An applicant/recipient or his authorized representative has the right to review the Medicaid eligibility case file upon request. **The Director or his delegated representative must be present when the applicant/recipient reviews the record and must document in the case file the review of the record by the client.** The applicant/recipient or his authorized representative may obtain without charge, a copy of the information in the eligibility case file. The information must be provided as promptly as possible but not more than five workdays after receipt of the request. There are exceptions to this requirement.
2. The **Exceptions** to the applicant/recipient or authorized representative's right to view case information include:
 - a. Confidential third party information which may not be released to the applicant/recipient or his authorized representative includes:
 - (1) Information that the agency is required by law to keep confidential, such as adoption records
 - (2) Information originating from another agency, medical provider or other source that is identified as "Confidential" or "Do Not Release"
 - (3) Information that would breach another individual's right to confidentiality, such as the identity of an individual who reports fraud and requests anonymity
 - (4) Documents and/or informational matches that originate from ESC and SSA, such as printouts of OLV and SOLQ. The applicant/recipient or his authorized representative may obtain this information from ESC and SSA.

CONFIDENTIALITY

REVISED 10/01/11 – CHANGE NO. 17-11

(V.B.2.a. (4))

NOTE: ESC and SSA information verified through OLV cannot be released from the Medicaid eligibility case record even if the Medicaid applicant/recipient or his authorized representative gives consent.

NOTE: Documentation in the eligibility case record of how the ESC benefits or SSA benefits were verified such as, "The recipient and the amount of SSA, (ESC) benefits were verified on mm/dd/yy by OLV dated, mm/dd/yy" may remain in the eligibility case record.

- b. Document the Medicaid eligibility case record and notify the applicant/recipient or his authorized representative **that information is being withheld and which of the exceptions specified above supports the decision to withhold information. If confidential information originating from another agency is being withheld, refer the applicant/recipient or his authorized representative to the appropriate originating source for the information withheld.**

3. Appeals

The applicant/recipient or his authorized representative has the right to examine the contents of the eligibility case records pertaining to the matter under appeal. The county DSS must allow the applicant/recipient or his authorized representative to examine any reports or documents of evidence being used in the hearing. If the applicant/recipient is represented by an attorney, the attorney has the same rights of access to eligibility records as the applicant/recipient.

NOTE: When the applicant/recipient or his authorized representative's right to view evidence for a hearing involves confidential information from a third party as described in B.2., contact the county attorney or the Division of Medical Assistance for guidance.

4. **Contested Information**

The a/r may contest the accuracy, completeness or relevancy of the information in his record. When the county DSS concurs that a correction of the contested information is justified, insert the correction in the record. Do not delete the original information if it is required to support receipt of state or federal financial participation. When the county DSS does not concur, allow the a/r to enter a statement in the record.

CONFIDENTIALITY

REVISED 10/01/11 – CHANGE NO. 17-11

(V.)

C. Client's Consent to Release Information

1. Do not request or require that the applicant/recipient or the authorized representative sign a blank consent form for release of information for future use. If the applicant/recipient or his authorized representative gives consent to release information, a valid consent form must contain all of the following:
 - a. Name of the person, provider or agency to whom the information is being released
 - b. Extent of information to be released
 - c. Name and dated signature of the applicant/recipient
 - d. A statement that the consent is subject to revocation at any time
 - e. Length of time the consent is valid.
2. Do not request or require that the applicant/recipient or the authorized representative disclose the applicant/recipient's PIN number or password for verification of checking or saving accounts or any other accounts. The financial information must be obtained from the banking institution by using a DSS-3431, Request for Financial Information, valid consent form. See 1 above.
3. The applicant/recipient or his authorized representative must be informed of the information to be released, the need for the release of information, and that there are statutes that protect his confidentiality.
4. The applicant/recipient or his authorized representative has the right to revoke his consent at any time. A verbal declaration is legally acceptable, but it is advisable to obtain a written statement revoking consent whenever possible.
5. See V. B 2. above for guidance regarding confidential information that may not be released even with the consent of the applicant/recipient or his authorized representative.

VI. RELEASE OF INFORMATION TO OTHER SOURCES WITHOUT CONSENT

A. Information may be disclosed without the consent of the applicant/recipient or his authorized representative in these situations:

1. To employees of the county DSS or another county DSS for administration of the programs of public assistance or social services;

Note: Child and Adult Protective Services can be considered "social service programs." However, information should be released to Child or Adult Protective Service on a case-by-case basis. In assessing the appropriateness of releasing the information, the need for the information must be balanced against the risks involved in releasing it. Contact your Medicaid Program Representative if you have any questions about releasing the information.

CONFIDENTIALITY**REVISED 10/01/11 – CHANGE NO. 17-11**

(VI.A.)

2. To Medicaid program staff in other states when a client moves or when there is a question of dual participation, or to verify the status of Medicaid assistance in North Carolina for applicants in another state;
3. Between county Departments of Social Services and the Division of Medical Assistance for the purposes of supervision and reporting;
4. To federal, state and county employees for the purposes of auditing, monitoring and evaluation of the programs of public assistance and social services (federal CMS employees, state DSS or DMA employees or field staff, financial auditors, monitors, etc.). The need for disclosure of confidential information must be justifiable for the purpose and adequate safeguards must be maintained to protect the information from re-disclosure;
5. For the purpose of complying with other state and federal statutes or regulations;
6. For the purpose of complying with a subpoena or court order. The subpoena or court order must have been signed by a judge in order to release information from the Medicaid eligibility case file. If you have a questionable situation regarding a court order or subpoena requesting Medicaid client information, contact the Division of Medical Assistance, Medicaid Eligibility Section at (919) 855-4000 and your county attorney for guidance regarding Medicaid regulations and legal issues.
7. To other states for matching purposes (For example, DMA has signed agreements with other states for the quarterly interstate and VA matches.)

See VIII: "Release of Information without Client Consent Chart.

B. When Release of Information Without Consent to Outside Sources Is Permissible

There are strictly limited outside sources to which DSS may disclose information without the consent of the applicant/recipient. The kind of information disclosed is limited.

1. Medicaid Enrolled Providers
 - a. Medicaid enrolled providers may be given certain information about the applicant/recipient's Medicaid status. This includes:

CONFIDENTIALITY

REISSUED 10/01/11 – CHANGE NO. 17-11

(VI.B.1.a.)

- (1) Medicaid identification number
- (2) Prior approval information

- b. Some schools are enrolled as Medicaid providers to bill for covered services they provide. When acting in the role of Medicaid provider, schools have the same access to eligibility information as other providers. There are no provisions to allow schools greater access than other providers.
- c. Medical providers who are not currently enrolled in the Medicaid program do not have access to information regarding Medicaid applicant/recipients.

2. Referral for Medicaid

The [DMA-5020](#), Notice of Case Status, serves as a referral for Medicaid from providers of inpatient care and as a notice of case status from the county dss. The form must state that the patient gives his consent for a referral to Medicaid and it must contain the signature of the patient or his authorized representative and a date. The only exception is for automatic newborn coverage and to verify dates of authorization for an individual who is already authorized for Medicaid. If these requirements are not met, the county dss cannot respond to the DMA-5020, Notice of Case Status referral.

NOTE: Some hospital admission forms state that the patient gives his consent for a referral to Medicaid. If a copy of this signed admission form accompanies a [DMA-5020](#), Notice of Case Status, consider the DMA-5020 as signed.

3. Health Check Coordinators and Community Care of North Carolina Case Managers (CCNC)

Health Check coordinators at the county health departments and CCNC case managers frequently request information about Medicaid recipients which they use to schedule services for recipients. For Health Check and CCNC activities involving outreach and follow-up, the county dss may release the recipient's name, address, phone number, and Medicaid ID number and authorization data. No other information may be released without client consent.

CONFIDENTIALITY

REISSUED 10/01/11 – CHANGE NO. 17-11

(VI.B.)

4. Social Security Administration and SSI Recipients

The Division has an agreement with the Social Security Administration to share information regarding SSI recipients because SSA determines Medicaid eligibility for SSI recipients. This includes reporting to SSA any information that would affect Medicaid eligibility (such as income and resources) if it is not reported to SSA by the recipient. The information is reported on the DMA-5049, Referral to Local Social Security Office.

This agreement applies only to SSI recipients. Information regarding Medicaid recipients who do not receive SSI cannot be released to SSA without a signed consent.

5. Agencies With Agreements

The State has signed agreements with certain agencies to facilitate administration of the Medicaid program. These agreements pertain to specific types of information and state the manner in which information is shared. The exchange of information in many cases is an electronic process. Safeguards are in place to ensure that client confidentiality is protected and that only information necessary in the administration of the program is exchanged. These agreements do not affect the release of applicant/recipient information by the county dss.

For example, EIS eligibility information is matched with Internal Revenue Service data for leads on income. Other On Line Verification (OLV) examples are SOLQ, BENDEX and SDX information from Social Security Administration, and unemployment and wage information from ESC.

6. Study and Research Projects

The State has on occasion entered into agreements with agencies to conduct approved study projects. For example, the Division recently received a grant from the National Academy for State Health Policy to evaluate child development services for Medicaid children under age 3 in Access II and III sites. A sample of parents were notified by mail and asked to participate in a telephone survey. This type of project must be evaluated and approved by the Division.

CONFIDENTIALITY

REVISED 10/01/11 – CHANGE NO. 17-11

(VI.B.)

7. Hospitals Acting for Deceased Applicants

Under limited circumstances, a hospital may request an appeal for a deceased applicant and have access to that applicant's case file without having a signed authorization from the deceased applicant. This can only occur when there is no known authorized representative or family member to act on the decedent's behalf.

C. Release of Information to Other Agencies Without Consent

Information from the applicant/recipient's Medicaid eligibility case record may not be released to other agencies, such as public housing agencies, legal services, private organizations, the United States Citizenship and Immigration Service (USCIS), Employment Security Commission (ESC), school lunch programs, health departments or elected officials without the client's consent.

These agencies frequently contact the Division of Medical Assistance (DMA) or the county Department of Social Services (DSS) for information regarding applicants/recipients. Some agencies request a list of recipients and their addresses for outreach purposes. This information cannot be released without the signed consent of the applicant/recipient.

The exception is agencies with whom the Division of Medical Assistance (DMA) has an agreement for specific types of sharing of information, such as on-line wage information from ESC and the Systematic Alien Verification for Entitlements (SAVE) verification system with the United States Citizenship and Immigration Service (USCIS). Only the information needed to complete the request for the agreed-upon information may be released.

In some cases these agencies are Medicaid enrolled providers, such as local health departments and mental health agencies. Release of information to those agencies is limited to that available to other Medicaid enrolled providers, as specified in B.1., above.

D. Release of Information to WIC Agencies and Maternity Care Coordinators

1. WIC agencies have requested the release of information on Medicaid eligible pregnant women and young children for outreach for the WIC program. Confidentiality rules do not allow the release of information to WIC agencies without the client's consent. The county dss must explain the WIC program and make a referral for women who are pregnant, breastfeeding or within 6 months of postpartum, or who have children under the age of 5.

CONFIDENTIALITY

REVISED 10/01/11 – CHANGE NO. 17-11

(VI.D.)

2. Health departments have also requested information on Medicaid eligible pregnant women to release to maternity care coordinators for follow-up on prenatal care and health needs. If the initiation of this service comes from the recipient and she has selected a maternity care coordinator, the information may be released to that provider. It is not allowable to release the names of Medicaid eligible pregnant women for the purpose of marketing the maternity care coordinator's services, even though those services may be of benefit.

VII. RELEASE OF INFORMATION TO FEDERAL, STATE AND COUNTY LAW ENFORCEMENT

County agencies receive requests for information regarding Medicaid clients from county state and federal law enforcement officers. Examine subpoenas, court orders and other requests for information from the client's Medicaid eligibility case record to protect client confidentiality. Court orders and/or subpoenas are acceptable only if signed by a judge.

The requirements for releasing information to law enforcement agencies are the same regardless of which agency is requesting the information.

Information must not be given to law enforcement, including Immigration and Customs Enforcement ICE ACCESS personnel, unless under a subpoena or court order that explicitly directs the release of the Medicaid eligibility client information. The subpoena or court order must be signed by a judge.

Information from the client's Medicaid eligibility case record must not be given if a subpoena or court order is signed by an attorney instead of a judge.

A subpoena or court order signed by a judge legally requires the Medicaid eligibility client information to be released without the client's consent. The client must be informed to the extent possible of the disclosed information. **The county may honor a law enforcement request to delay notification of the client of the disclosure for a reasonable amount of time not to exceed 10 calendar days.** Document in the Medicaid eligibility case record, that a subpoena or court order was received and the method of informing the client of the disclosed information.

If you receive a court order or subpoena requesting Medicaid eligibility client information, contact the Division of Medical Assistance, Medicaid eligibility section at (919) 855-4000 and your county attorney for guidance regarding Medicaid regulations and legal issues.

CONFIDENTIALITY

REISSUED 10/01/11 – CHANGE NO. 17-11

VIII. RELEASE OF INFORMATION WITHOUT CLIENT CONSENT CHART

Information May Be Released To The Following:	Type of Information				Purpose				
	Eligibility Status	Explanation of DSS Action (Case specific)	Personal Info	3 rd Party Info “Confidential” “Do Not Release” or SSA	Appeal	Fraud	Other Crimes	Billing MA	Billing Client
County, State and Federal dss staff for the purpose of administering the programs of public assistance and social services	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes
	Yes, if client moves from one county to another or a courtesy application is taken. Info may also be shared with other states to establish residency or avoid duplicate benefits or dual participation.								
Other federal, state, local employees	Yes, if necessary to the administration of the program. Examples: DMA monitors, financial auditors, CMS and DDS employees reviewing cases, state and regional DMA/DSS eligibility staff for supervision/reporting								
A/R & A/R’s authorized rep. (parent, legal guardian, POA, executor)	Yes	Yes	Yes	No. Must be advised if info withheld	Yes, if info is used as evidence	Yes	No	Yes	Yes
Providers enrolled in Medicaid (hosps., drs., labs, health depts., etc.)	Yes	No	No	No	No	No	No	Yes	Yes
Providers not enrolled in Medicaid	No	No	No	No	No	No	No	No	No
Law Enforcement personnel <u>unless there is a subpoena or court order signed by a judge</u>	No	No	No	No	No	No	No	No	No
Social Security Administration: ONLY FOR SSI RECIPIENTS	Yes	Yes	Yes	No	No	No	No	No	No
Other agencies, (not enrolled as providers) ex. housing, INS, legal services, school lunch, WIC	No	No	No	No	No	No	No	No	No

CONFIDENTIALITY

REISSUED 10/01/11 – CHANGE NO. 17-11

IX. CONFIDENTIALITY OF INFORMATION RECEIVED FROM THE SOCIAL SECURITY ADMINISTRATION

Medicaid caseworkers, DSS county staff and designated contractors use Social Security Administration data to assist in determining eligibility for programs of public assistance and social services. The following link, <http://www.dhhs.state.nc.us/dma/medtrain>, contains the Social Security Administration DHHS/SSA SDX-BENDEX-SVES 1137 agreement and SOLQ agreement. Information provided in those agreements must be followed by the county caseworkers when disclosure or re-disclosure of information received from SSA is necessary in order to determine Medicaid eligibility. The caseworker must ensure that the person requesting SSA information will be utilizing the data as appropriate per the DHHS/SSA agreement. **Information can only be disclosed to staff with authority to have access based on role or program. Information cannot be given to other county staff who do not have access.**

X. CONFIDENTIALITY OF ELIGIBILITY INFORMATION SYSTEM (EIS) DATA

Access to EIS must be requested and is approved based on the position and the function of the individual requesting access. Information contained in EIS must not be shared with individuals or agencies that do not have access to the information in EIS.

Individuals or agencies *with* access or limited access to EIS are entitled only to that information for which they already have access and could access themselves. Information cannot be given to other county staff who do not have access.

XI CONFIDENTIALITY OF INFORMATION RECEIVED FROM THE EMPLOYMENT SECURITY COMMISSION (ESC)

An agreement made and entered into between the Employment Security Commission and the North Carolina Department Of Health and Human Services (DHHS) allows on-line and/or computer cross-match access to wage history information, unemployment benefit information, and Employment Service program information in the possession of the ESC needed by DHHS's employees in the performance of their public duties.

Medicaid caseworkers, DSS county staff and designated contractors may use Employment Security Commission (ESC) data to assist in determining eligibility for programs of public assistance and social services. However, access to ESC must be requested and is approved based on the position and the function of the individual requesting access. Information contained in ESC must not be shared with individuals or agencies that do not have access to the information in ESC. **Information can only be disclosed to staff with authority to have access based on role or program. Information cannot be given to other county staff who do not have access.**