

CHAPTER 105. SAFEGUARDING INFORMATION

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Cross References

This chapter cited in 55 Pa. Code § 125.24 (relating to procedures); 55 Pa. Code § 141.61 (relating to policy); 55 Pa. Code § 153.44 (relating to procedures); 55 Pa. Code § 451.1 (relating to policy); 55 Pa. Code § 2050.17 (relating to confidentiality); 55 Pa. Code § 2060.14 (relating to Departmental appeal and hearing request); and 55 Pa. Code § 2070.25 (relating to confidentiality).

§ 105.1. Policy.

(a) *Legal provisions.* The legal provisions relating to policy for safeguarding information are as follows:

(1) The provisions of this chapter safeguard information relating to individual applicants and recipients of public assistance by restricting the use or disclosure of the information as required by sections 404, 425 and 505 of the Public Welfare Code (62 P. S. §§ 404, 425 and 505).

(2) The term “PA” as used throughout this section includes the cash assistance program (TANF, GA, SBP), the ETP, the child welfare program, the child support enforcement program, the MA Program, the SSI Program and the Social Services Program.

(b) *General objective.* The general objective of this chapter is as follows:

(1) The objective of this chapter is to permit the maximum use of information collected from and about a client to determine eligibility for assistance, and still preserve, insofar as possible, that relationship of confidence between the Department and its clients, and the Department and the public at large, which is vital to efficient administration. To carry out this objective, the Department has established regulations defining the use and disclosure of information on applicants and recipients.

(2) The term “Department” as used in this section refers to offices and employees of the Department of Public Welfare that are concerned with the administration of the public assistance program.

(c) *General policy in the collection and use of information.* General policy in the collection and use of information is as follows:

(1) The Department will collect and use only that information that relates to its responsibilities in administering the public assistance program. The client shall give information for purposes directly related to eligibility for assistance or other services the Department gives, and use of the information by the Department is confined to those purposes. The Department often requires information from and regarding clients which is of a highly personal nature. The

information is limited in its scope and its use to that which is essential to the proper discharge of the responsibilities of the Department. As a measure to provide protection of the individuals it serves, the Department will take precaution against their being exploited for commercial or political reasons.

(2) The Department will give pertinent statistical or social data in general studies, reports, surveys, information on expenditures, number and category of recipients, and other information, so long as none of it identifies any particular individual.

(3) The Department will provide information to law enforcement officials as provided in § 105.4 (relating to procedures) and information regarding an individual under the safeguards provided in this chapter, when this information relates to a service the individual is asking for himself, or one asked for on his behalf by someone he has requested to act for him, and when the service is related to the purpose and function of the public assistance program.

(d) *Information to be safeguarded.* The Department will safeguard the following information:

(1) The names of applicants and recipients.

(2) The address of any applicant or recipient and the amount of assistance any recipient is receiving except as provided in § 105.4.

(3) Information in applications, reports of investigations, financial and medical records, correspondence and other recorded or unrecorded information, related to the condition or circumstances of applicants and recipients. This applies to information in the offices of the Department, the Department of the Auditor General, the Treasury Department and other agencies concerned with the administration of public assistance. Information that does not identify a particular individual is not included in the class of material to be safeguarded.

(e) *Information on MA.* The policy for information on MA is as follows:

(1) Each recipient or applicant for MA has the right to have the information given to the Department about his circumstances kept confidential. The information may be used only for purposes related to the administration of assistance.

(2) In the administration of the MA Program, the agency is required to provide to the vendor of medical care and services certain information regarding an applicant or recipient. In these relationships, it is the responsibility of the agency to be reasonably assured that these persons will safeguard the information and use it only for the purpose for which it was made available.

(3) Public access to information on the application of any person for or receipt of MA is not provided. Section 105.4(a)(1) does not apply to MA records.

(f) *Use of information outside the Department.* An individual may not have direct access to the records of the Department unless that individual has an official connection with any part of the Department, or is an employee of the Auditor General's Department, the Treasury Department or another Commonwealth or

Federal agency officially charged with administrative supervision, review, evaluation or audit. Moreover, this access to records is confined to materials essential to carrying out the official functions of the Department or agency involved. Employees of agencies who are engaged in investigation of welfare fraud will in no way be prohibited access to case records. An individual may not have direct access to his own case record except as provided in § 105.5 (relating to access by an individual to his case file).

(g) *Authority to disclose information.* Authority to disclose information will vest in accordance with the following:

- (1) Information in the possession of the Department is within the exclusive control and custody of the Secretary.
- (2) Authority to disclose information as provided for in this chapter is delegated to the executive director of each county board of assistance, and to those persons in the State Office that the Secretary designates from time to time.
- (3) The executive director may delegate this responsibility only to top supervisors of social service staff.
- (4) The files and records of the Department must be properly protected at all times. Each CAO shall have written rules on the removal of material from the files, return of this material and supervision of the files.

Authority

The provisions of this § 105.1 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 105.1 amended December 21, 1979, effective February 19, 1980, 9 Pa.B. 4178; amended October 2, 1992, effective upon publication and apply retroactively to October 1, 1989, 22 Pa.B. 4875; amended September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (268239) to (268240) and (266085).

Notes of Decisions

Disclosure of Information

The Department must comply with a subpoena duces tecum and supply records pertaining to the petitioner in a proceeding to determine paternity, but the petitioner is not precluded from asserting the privilege that such records not be disclosed, even though the Department fails to follow its own procedure for pleading that such disclosure is restricted. *Spangler v. Spangler*, 12 Pa. D. & C.3d 290 (1978).

Cross References

This section cited in 55 Pa. Code § 201.4 (relating to procedures).

§ 105.3. Requirements.

(a) The records and files of the Department will be used only by those employees properly concerned with them in performing their duties. Case records and other information relating to a client will be forwarded to the State Office

upon request. The use of information by county board members is governed by the same rules as govern employees.

(b) The use of information in the possession of the Department concerning applicants and recipients is restricted to purposes directly connected with the following:

(1) The administration of the public assistance programs of the Department. The purposes include establishing initial and continued eligibility, determining amount of assistance to be granted and providing services.

(2) An investigation, prosecution or criminal or civil proceeding conducted in connection with the administration of the programs.

(3) The administration of another Federal or Federally-assisted program which provides assistance, in cash or in-kind, or services directly to individuals on the basis of need.

(c) Disclosure to a committee or legislative body, whether Federal, State or local of information other than that specified in § 105.4(a)(1) (relating to procedures) is prohibited.

(d) Certification of the receipt of TANF to an employer for the sole purpose of claiming tax credit under the Tax Reduction Act of 1975 (26 U.S.C.A. §§ 3, 11, 12, 21, 42—48, 50A, 50B, 56, 141, 214, 243, 535, 613, 613A, 703, 851, 901, 902, 951, 954, 955, 962, 993, 1034, 1551, 1561, 3402, 6012, 6096, 6201, 6401 and 6428) is considered to be for a purpose directly connected with the administration of the public assistance program. The employers tax credit has been extended through December 31, 1979 by the Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520. Upon written request by the employer, the CAO will complete a PA 132 certifying that the client received assistance immediately prior to the date of hire and continuously for 90 days prior to the date of hire. In non-WIN counties, three signed copies are required; for the employer, county assistance office central file, and the the case record. In WIN counties, four signed copies are required; for the employer, county assistance office central file, case record and the local WIN office.

(e) When seeking additional information or proof from further sources, the Department will use only that information in its possession that is strictly relevant to the purpose. The basis for this use of information is that every client understands what is involved in determining eligibility and has, therefore, given consent to this use of information. Further reference should be made to § 121.1 (relating to policy).

(f) Information may be used to provide a service the client has asked for, or to answer inquiries made on the behalf of the client, if the Department has valid grounds for concluding that the client has asked the inquirer to act on his behalf. Information thus used must be strictly relevant to the particular service requested. In getting information for other agencies, the Department will tell the person interviewed that the information given will be sent to the inquiring agency.

(g) Information may be released to law enforcement officials, and the Pennsylvania State Police and the Board of Probation and Parole, in compliance with State and Federal law relating to release of information as provided in § 105.4.

Authority

The provisions of this § 105.3 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 105.3 amended December 21, 1979, effective February 19, 1980, 9 Pa.B. 4178; amended September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (266085) to (266086).

§ 105.4. Procedures.

(a) *Use and disclosure of information outside the Department.* The Department will use information or disclose it to private individuals, officials or agencies outside the Department as set forth in the following:

(1) Provided that the information is not to be used for political or commercial purposes, the address and amount of assistance a person is currently receiving will be disclosed to an adult resident of this Commonwealth who asks for the information about a person. In releasing the information, the county office must be reasonably assured that the person is 21 years of age or older and a resident of this Commonwealth. The county office also will take the following steps:

(i) If the inquirer appears in person, the information in the "Request" section of *Form PA 163, Request for Address and/or Amount of Assistance* will be filled in, and the person making the request shall sign the form before the information is disclosed. The "Reply" section of the form will then be completed.

(ii) If the request is made by telephone and the inquirer is known to the person receiving the request and the inquirer knows about the restrictions on the use of information, the information will be given over the telephone. Otherwise, the inquirer will be advised to either come to the office or to make his request in writing. If information is given over the telephone, the person giving the information will prepare a Form PA 163 (Request for Address and/or Amount of Assistance) for file, showing the name of the person making the request.

(iii) If the information is requested by correspondence, the county office will prepare a reply in duplicate, always including in any reply that gives information the following excerpts from the Public Welfare Code (62 P. S. §§ 404 and 483):

Section 404: The department shall have the power to make and enforce regulations:

(1) To protect the names of applicants for and recipients of public assistance from improper publication, and to restrict the use of information furnished to other agencies or persons to purposes

connected with the administration of public assistance. Upon request by any adult resident of the Commonwealth, the department may furnish the address and amount of assistance with respect to persons about whom inquiry is made; but, information so obtained shall not be used for commercial or political purposes; and, no information shall be furnished regarding any person's application for, or receipt of, medical assistance.

* * * * *

Section 483 Penalties.—Any person knowingly violating any of the rules and regulations of the department made in accordance with the Article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine, not exceeding one hundred dollars (\$100), or to undergo imprisonment, not exceeding six months, or both.

(2) Information relating to the eligibility of a person for assistance obtained as a result of a request for information will be entered in the case record. The signed *Form PA 163, Request for Address and/or Amount of Assistance*, or the duplicate of the letter will be filed so as to make it as easy as possible to assemble information on these requests for the State Office when it asks for the information.

(b) *Additional uses.* Before use or disclosure of information as provided in this chapter, it is the responsibility of the Department to be reasonably assured that the use or disclosure is for a purpose connected with public assistance and the receiving agency or official will safeguard the information, will use it only for the purposes for which it was made available and has standards of protection equal to those of the Department on the use of information by staff, and on office equipment and procedures.

(1) *Action by the Department to collect money due, or to protect welfare of certain clients.* Information may be disclosed by the Department when necessary to carry out the regulations on recovering money due as set forth in Chapters 255 and 257 (relating to restitution; and reimbursement).

(2) *Request by a public or private agency.* At the request of a public or private agency that the individual has asked for services, information may be furnished to the agency if its objective is to protect or advance the welfare of the individual, and if the individual has given that agency specific consent to the release of specific information from the records of the Department.

(3) *Judicial order (subpoena).* Information may be disclosed on proper judicial order. If, however, a proper judicial order to disclose information other than as provided in subsection (a) is for a purpose not connected with the administration of the Department, the following steps will be taken:

(i) The Executive Director will send a memo to the Chief, Division of Claim Settlement, Harrisburg, Pennsylvania explaining the situation and asking for legal counsel. In an emergency, the Executive Director will telephone.

(ii) A staff member will appear in court with counsel.

(iii) The Department will plead, in support of its request to withhold information, that under the Public Welfare Code (62 P. S. §§ 101—1503), the rules of the Department prohibit the disclosure of information in records and files, including the names of clients, except as provided in subsection (a).

(iv) After the plea is made, the Department will be governed by the final order of the court.

(v) Immediately following the court proceedings, a complete report will be made to the Chief, Division of Claim Settlement, Harrisburg, Pennsylvania.

(c) *Release of information to law enforcement officials.* For applicants and recipients of TANF and GA cash assistance, the Department will comply with the following:

(1) Provide to a Federal, State or local law enforcement officer the address of a fugitive felon, parole or probation violator or an individual who may have information that the officer needs to conduct official duties if the location and apprehension of the recipient is within the official duties.

(2) Exchange information with the Pennsylvania State Police and the Board of Probation and Parole to identify individuals who have been sentenced for a felony or misdemeanor and have not satisfied the penalty imposed by law to ensure that cash assistance is not granted to those individuals. The Pennsylvania State Police and Board of Probation and Parole will have access to the records of the Department's Assistance Recipient Identification Program (finger-imaging file).

(d) *Names of SBP recipients.* A request by an individual or organization for the names of SBP recipients, or for lists of the names, except as provided in this section, will be referred to the Bureau of Blindness and Visual Services Department of Public Welfare, Harrisburg, Pennsylvania. The files of the Bureau of Blindness and Visual Services contain the names of blind persons who are not recipients as well as those who are. The Bureau of Blindness and Visual Services is the agency authorized by law to collect data on the nature and extent of blindness in this Commonwealth. The Bureau of Blindness and Visual Services will determine the validity of a request for names of blind persons and will release appropriate names to those individuals or agencies that have a valid interest in blind persons.

(e) *Mailing or distribution of materials.* Procedures for mailing or distribution of materials will be as follows:

(1) Materials mailed or distributed to applicants, recipients or medical vendors will be limited to those which are directly related to the administration of the program. This will include materials enclosed in envelopes containing checks. Materials having political implication are prohibited from mailing or distribution to applicants, recipients or medical vendors. Specifically prohibited from mailing or distribution will be holiday greetings, general public announcements, voting information and alien registration notices.

(2) Mailing or distributing materials that are in the immediate interest of the health and welfare of applicants and recipients is permitted. The materials include announcements of free medical examinations, availability of surplus food and consumer protection information.

(3) Only the names of persons directly connected with the administration of the program will be contained in material mailed or distributed to applicants, recipients and vendors. The persons will be identified only in their official capacity with the Department.

(f) *Making rules and regulations known.* The provisions of this chapter, including the penalty for violation, will be:

(1) Distributed to every county board member and members of the appropriate State boards.

(2) Circulated to Department employees concerned with the administration of public assistance, called to the attention of every new employee and filed to be accessible to every employee.

(3) Made available to persons to whom public assistance information is given.

(4) Made available to interested persons.

Authority

The provisions of this § 105.4 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; and the Federal TANF regulations in 45 CFR 260.10—265.10.

Source

The provisions of this § 105.4 amended September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (247245) to (247246) and (266087) to (266088).

Notes of Decisions

Disclosure of Information

A nonprofit organization is not entitled to obtain a list of welfare recipients against whose real property the Department had unsatisfied recorded property liens from the Department of Public Welfare. *Mon Valley Unemployed Committee v. Department of Public Welfare*, 618 A.2d 1227 (Pa. Cmwlth. 1992); appeal denied 692 A.2d 1385 (Pa. 1993).

The public assistance file of a plaintiff in a personal injury suit must be supplied for *in camera* inspection and copying when it is clear that the requested records hold relevant information which may be instrumental in determining issues of injuries or medical conditions existing prior to the condition complained of, and the plaintiff has executed a release giving the defendant access to confidential medical information including “governmental records.” *Cleversy v. Denver and Ephrata Telephone and Telegraph Company*, 15 Pa. D. & C.3d 223 (1980).

The Department must comply with a subpoena *duces tecum* and supply records pertaining to the petitioner in a proceeding to determine paternity, but the petitioner is not precluded from asserting the privilege that such records not be disclosed, even though the DPW fails to follow its own procedure for pleading that such disclosure is restricted. *Spangler v. Spangler*, 12 Pa. D. & C.3d 290 (1978).

Cross References

This section cited in 55 Pa. Code § 105.1 (relating to policy); and 55 Pa. Code § 105.3 (relating to requirements).

§ 105.5. Access by an individual to his case file.

(a) Except as limited by subsection (b), the entire contents of the case file of an individual which is maintained by a County Assistance Office, administering agency or service provider, will be made available to the individual and to his authorized representative. The agency may request that authorization of the representative be in writing signed by the individual. Requests for access will be honored if approved by the County Assistance Office Director or made at the following times:

(1) At the time of redetermination of eligibility or reapplication for assistance.

(2) After a request for a fair hearing.

(b) For the purposes of subsection (a), the contents of the case file of an individual may not include the following:

(1) Case narrative prior to January 1, 1980 unless that information is directly relevant to the issue in a fair hearing requested by the individual.

(2) Medical records, unless the supplying physician consents to their release.

(3) Information of a confidential or personal nature about members of the grant group, other than information about the individual requesting access.

(4) A written or narrative summary of complaints or allegations received by the Department about the individual. The substance of the complaints shall be available in summary form, to the extent that it is possible to do so while still insuring the continued confidentiality of the informant.

(5) Information compiled in reasonable anticipation of a civil or criminal action or proceeding.

(c) For the purposes of subsection (a), the term made available means that an individual will be permitted to examine his case file during normal working hours at the County Assistance Office in the presence of a staff member. No material may be removed from the case file by the individual; however, up to ten pages of material may be copied for the individual, if he so requests. If more than ten pages of material are requested, the Department may require the individual to pay a reasonable cost per page for reproducing the material in excess of ten pages.

(d) An individual may request, within 10 days following the review of his case file, that the agency correct or delete any portion thereof which the individual believes to be inaccurate, irrelevant or incomplete.

(1) If the Department agrees with the request of the individual the Department will promptly make the requested correction.

(2) If the agency objects to the request of the individual, the Department will promptly inform the individual of its objection, the reason for the objec-

tion, and the right of the individual to request a fair hearing as provided in § 275.1(a)(1) (relating to policy). Hearing requests must be made within 30 days of the date of the notice of refusal to amend as provided in § 275.3(b)(1) (relating to requirements).

(e) Nothing in this section limits access to the contents of a case file through the use of legal process, including a subpoena or proper discovery proceedings in the course of litigation. This section only is intended to define the terms of access outside of the use of legal process.

Source

The provisions of this § 105.5 adopted December 21, 1979, effective February 19, 1980, 9 Pa.B. 4178.

Cross References

This section cited in 55 Pa. Code § 105.1 (relating to policy); and 55 Pa. Code § 275.3 (relating to requirements).

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