

99 OCFS INF-006

Protective Services for Adults (PSA):
Confidential Information
Sharing Agreement



OFFICE OF CHILDREN AND FAMILY SERVICES

INFORMATIONAL LETTER

TRANSMITTAL: 99 OCFS INF-006

DIVISION: Development and
Prevention Services

DATE: April 15, 1999

**New York State
Office of
Children & Family
Services**

TO: Commissioners of
Social Services

SUBJECT: Protective Services for Adults (PSA): Confidential
Information Sharing Agreement

George E. Pataki
Governor

John A. Johnson
Commissioner

SUGGESTED

DISTRIBUTION: Directors of Social Services
Protective Services for Adults Supervisors
Agency Attorneys

CONTACT PERSON: Any questions concerning this release should be directed to your district's Adult Services representative as follows:

Capital View Office Park
52 Washington Street
Rensselaer, NY 12144-2796

Kathleen Crowe (518) 486-3451 or USERID ROF017
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Michael Monahan (518) 474-9590 or USERID AY3860

ATTACHMENTS: Model PSA/OMH/OMRDD Agreement Concerning Information Sharing (available on line)
Letter of Introduction (not available on line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
92 INF-26		Part 357 Part 403 Part 457	473 SSL 20, 34, 136 33.13 MHL Article 27-F of Public Health Law		

OCFS-4614EL (Rev. 11/98)



I. Purpose

The purpose of this release is to inform local districts of a Confidential Information Sharing Agreement which has been developed by the New York State Office of Children and Family Services (OCFS) in cooperation with the New York State Office of Mental Health (OMH) and the New York State Office of Mental Retardation and Developmental Disabilities (OMRDD). This agreement, which conforms to the applicable confidentiality laws and regulations of each agency, sets forth the conditions under which confidential information may be disclosed among local district PSA, OMH and OMRDD providers concerning individuals who are being mutually served. Safeguards have been included to ensure that information disclosed will not be used inappropriately by either party and that the confidential nature of the information will be protected.

II. Background

One of the guiding principles of Protective Services for Adults (PSA) is that PSA is a community effort requiring cooperation among a number of agencies. This concept is supported by Section 473.2(a) of the Social Services Law (SSL) which states that: "the effective delivery of protective services for adults requires a network of professional consultants and services providers" and requires local social services districts to work "with other public, private and voluntary agencies including but not limited to health, mental health, aging, legal and law enforcement agencies, for the purpose of assuring maximum local understanding, coordination and cooperative action in the provision of appropriate services" to PSA clients. The SSL therefore anticipates the sharing of information necessary to appropriately serve the client.

Sections 20, 34, 136 and 473 of the Social Services Law, and Section 33.13 of the Mental Hygiene Law (MHL) set forth the standards for maintaining the confidentiality of clinical and case record information. Some local districts have from time to time experienced difficulty obtaining confidential information from agencies licensed by OMH or OMRDD when such information was necessary for the provision of Protective Services for Adults. This hesitancy or refusal to provide information is generally based on a belief that the sharing of such information is legally prohibited despite the fact that both the SSL and MHL allow for the exchange of information between service agencies as set forth in the attached agreement.

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This agreement, which has been sanctioned by the commissioners of OCFS, OMH and OMRDD respectively, will assist in facilitating a more cooperative relationship in the appropriate sharing of confidential information. Local districts are urged to contact local mental health and mental retardation and developmental disability service providers in order to sign this agreement and abide by its contents. When accompanied by the letter signed by the OCFS, OMH and OMRDD commissioners, local agencies should feel secure in entering into the agreement with your agency's PSA program. It is anticipated that many of the previously experienced problems in obtaining confidential information will be alleviated through the use of the Agreement.

A handwritten signature in black ink, appearing to read 'Donald K. Smith', written over a horizontal line.

Donald K. Smith
Deputy Commissioner
Development and Prevention Services

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MODEL PSA/OMH/OMRDD AGREEMENT CONCERNING INFORMATION SHARING

I. PURPOSE

This agreement is between _____, a provider of services to individuals who are diagnosed with, or being assessed for, a mental illness, mental retardation or developmental disability, as defined in section 1.03 of the Mental Hygiene Law, and the _____ County Department of Social Services Protective Services for Adults Program (PSA) as provided for in Section 473 of the Social Services Law. The agreement sets forth the conditions and responsibilities of each service agency for the sharing of confidential information upon the initial referral of an individual from one service agency to the other for the arrangement for and the provision of services, as appropriate, or when an individual is already receiving services from both service agencies and the information is necessary for the coordination and continuation of such services.

All parties to this Agreement recognize that preservation of the confidentiality of information and the protection of an individual's right to privacy and personal autonomy is achieved by restricting access to and disclosure of information maintained by the parties regarding such individual. Both service agencies also recognize, however, that access to certain confidential information concerning an individual is essential for the arranging of necessary services and assuring the continuity and appropriateness of such services. It is further recognized, pursuant to Section 473.2 (a) of Social Services Law, that the effective delivery of PSA requires a network of professional consultants and service providers and that local social services districts are required to plan with other public, private and voluntary agencies, including mental health agencies, for the purpose of assuring maximum local understanding, coordination and cooperative action in the provision of appropriate services. In addition, Section 473-e of the Social Services Law, Section 2782 of the Public Health Law and Section 33.13 of the Mental Hygiene Law provide for the sharing of specific information concerning persons receiving services among service providers when necessary to assure the provision of essential services to an individual.

II. NATURE OF INFORMATION TO BE DISCLOSED

Information disclosed to either agency must be reasonably related to the purposes for which the information is requested and must be narrowly tailored to only that information essential to assessing an individual's need for, or obtaining or continuing the service(s) being sought or provided. Shared information may not go beyond that which is necessary to ensure the delivery of essential services to the individual. Notwithstanding the provisions of this agreement, a social services official may withhold, in whole or in part, any information he or she is otherwise authorized to release if such official finds that the release of such information would identify a person who made a referral or submitted an application on behalf of a person for PSA, or who cooperated in a subsequent investigation and

assessment conducted by a social services district to determine a person's need for such services, when such official determines that the release of such information would be detrimental to the safety or interests of the person who made the referral, submitted the application or cooperated with the subsequent investigation and assessment.

III. SAFEGUARDS

PSA and the provider of services for individuals who are diagnosed with a mental illness, mental retardation or developmental disability agree that the following safeguards will be maintained with regard to shared information relating to those receiving or being considered for services:

1. the information must be necessary to ensure the delivery of appropriate services to the individual and must be used solely for the purposes for which it was made available, such purposes to be reasonably related to the purposes and function of the inquiring agency;
2. the information will not be used for commercial or political purposes or to further the interests of the service agency where such information is not specifically being used to access or provide needed services to the individual.
3. DISCLOSURE OF INFORMATION WILL BE LIMITED TO ONLY THAT INFORMATION NECESSARY IN LIGHT OF THE REASONS FOR DISCLOSURE. ALL INFORMATION SO DISCLOSED SHALL BE KEPT CONFIDENTIAL BY THE PARTY RECEIVING THE INFORMATION. ANY STATUTORY LIMITATIONS ON DISCLOSURE IMPOSED ON THE PARTY PROVIDING THE INFORMATION SHALL APPLY TO THE PARTY RECEIVING THE INFORMATION. THE PARTY PROVIDING THE INFORMATION MUST NOTIFY THE PARTY RECEIVING THE INFORMATION OF ANY APPLICABLE STATUTORY RESTRICTIONS CONCERNING FURTHER DISCLOSURE. A NOTATION OF DISCLOSURE OF THE INFORMATION WILL BE MADE IN THE AFFECTED INDIVIDUAL'S CLINICAL OR CASE - RECORD AND NOTICE OF SUCH DISCLOSURE SHALL BE GIVEN TO THE INDIVIDUAL UPON REQUEST.

IV. PROCEDURE FOR DISCLOSING SPECIFIC INFORMATION CONCERNING INDIVIDUALS

1. All requests for information between the parties to this agreement will be documented in the individual's case or clinical record. The documentation should include the specific information requested, the reason for the request, the person to whom the request was made, the person making the request, and the date of the request.
2. All responses to requests for information must be issued as soon as possible, and in no case more than ten (10) working days after the receipt of the request unless extenuating circumstances, as agreed to by each party, necessitate a longer response time. If it is not possible to respond within ten (10) working days, the party receiving the request must issue an acknowledgment within ten (10) working days and provide a brief explanation of the reason for delay and an estimate of the additional time needed before a response will be forthcoming.

3. All disclosures of information must be documented in the individual's case or clinical record. This notation must include a brief statement indicating the party to whom the disclosure was made, the date of the disclosure, the purpose for which the disclosure was made, and the nature of the information disclosed. Upon request, the individual must be informed of all such notated disclosures of information.

4. Pursuant to Section 473-e(3) of the Social Services Law, the commissioner or a social services official may withhold, in whole or in part, the release of any information in their possession which he or she is otherwise authorized to release, if such official finds that release of such information would identify a person who made a referral or submitted an application on behalf of a person for protective services for adults, or who cooperated in a subsequent investigation and assessment conducted by a social services district to determine a person's need for such services and the official reasonably finds that the release of such information will be detrimental to the safety or interests of such person.

V. DISCLOSURE OF OFFICE OF CHILDREN AND FAMILY SERVICES (OCFS) INFORMATION (FORMERLY DIVISION FOR YOUTH)

An agency may deny any requested information upon a determination that the release of the requested information would violate Executive Law, section 510-c which requires that the identity of any youth who is or was ever in the custody of the former Division for Youth or its successor agency, the Office of Children and Family Services (OCFS) be kept confidential, as well as their records and files.

OCFS is required to safeguard these records. Therefore, the provider will safeguard resident identities and confidential information from resident files from coming to the knowledge of or inspection or examination by any person other than one authorized to receive such information or to inspect or examine such documents.

VI. DISCLOSURE OF CONFIDENTIAL HIV/AIDS INFORMATION

Confidential HIV/AIDS information may be disclosed between authorized staff of each agency when it is necessary for the provision, supervision, monitoring or administration of health or social services to a protected individual. A "protected individual" means a person who is the subject of an HIV related test or has been diagnosed as having HIV infection, AIDS or HIV related illness. "Authorized staff" means only those employees or agents of a party to this Agreement who would, in the ordinary course of business of the agency, have access to records relating to the care of, treatment of, or provision of a health or social service to the protected individual. The term "confidential HIV/AIDS information" means any information, in the possession of a person who provides one or more health or social services or who obtains the information pursuant to a release of confidential HIV related information, concerning whether an individual has

been the subject of an HIV related test, or has HIV infection, HIV related illness or AIDS, or information which identifies or reasonably could identify an individual as having one or more of such conditions, including information pertaining to such individual's contacts.

Confidential HIV/AIDS information should not be released without the consent of the protected individual or, if the individual lacks the capacity to consent, the information should not be released without the consent of the individual's authorized representative unless the release of such information is reasonably necessary for the supervision, monitoring, administration or provision of health or social services.

With regard to a written release of confidential HIV/AIDS information by a protected person or by the protected person's authorized representative, including reports on whether an individual has had an HIV related test or has been diagnosed as having AIDS, HIV infection or an HIV-related illness, such a release of information must be dated, specify to whom disclosure is authorized and the time period for which the release is effective. A general authorization for the release of medical or other information cannot be used to disclose HIV/AIDS information, unless such dual purpose is specifically indicated in the authorization. Any disclosure of confidential HIV/AIDS information also must be accompanied by the following written statement or such written statement must follow the oral disclosure within ten (10) days.

"This information has been disclosed to you from confidential records which are protected by State law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure."

Although the protected individual's confidential HIV/AIDS information may be shared without consent, each agency recognizes the importance of being extremely sensitive to the issues of stigma, isolation and discrimination faced by persons with HIV/AIDS in deciding to release confidential HIV/AIDS information. Each party to this Agreement shall consider the potential negative ramifications of the release of confidential HIV/AIDS information and shall weigh the perceived harm of such disclosure against the stated need for the information before such information is released.

VII. TERMS OF AGREEMENT

1. The agencies entering into this agreement will review the terms of this agreement at least annually.
2. Changes in the agreement may be made at any time by the mutual consent of the parties.
3. Either party may terminate this agreement by giving 30 days written notice to the other party.

4. It is understood by both parties that subsequent changes in law or policy affecting each agency may necessitate changes or modification to this model agreement. In the event that such changes or modification become necessary, this model agreement will be revised accordingly.

Title

Title

Agency

Agency

Date

Date

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George E. Pataki
Governor

State of New York
Office of Children and Family Services

John A. Johnson
Commissioner

Capital View Office Park
52 Washington Street - Rensselaer, NY 12144

Dear Service Provider:

The attached model Confidential Information Sharing Agreement has been jointly developed by the New York State Office of Children and Family Services (OCFS), the New York State Office of Mental Health (OMH), and the New York State Office of Mental Retardation and Developmental Disabilities (OMRDD). The Agreement's purpose is to facilitate information sharing between service providers when a local social service district Protective Services for Adults (PSA) client is also receiving services from a public or private mental health or mental retardation and developmental disabilities provider. In order to effectively provide and coordinate services, it is often necessary to share confidential information on a particular individual with another service provider. This Agreement may be used to facilitate information sharing when one or more agencies is reluctant to do so because of confidentiality concerns.

The Agreement sets forth the legal bases which authorize the Sharing of confidential information and also establishes programmatic safeguards to protect the confidentiality of the information being shared. In addition, the provisions of the Agreement satisfy all confidential information sharing provisions in the Mental Hygiene and Social Services Law.

We believe that this model Agreement will be an effective tool in enabling the responsible sharing of confidential information when such sharing is necessary to arrange or provide services for individuals being served by various service providers and therefore encourage its use.

John A. Johnson, Commissioner
New York State Office of Children and Family Services

James L. Stone, Commissioner
New York State Office of Mental Health

Thomas A. Maul, Commissioner
NYS Office of Mental Retardation and Developmental Disabilities