

Chapter 101: Confidentiality

Vermont Division of Vocational Rehabilitation
Policy and Procedures Manual

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Table of Contents

Section I.	Definitions	2
Section II.	General Policy.....	2
Section III.	Use of the Case Record	2
Section IV.	Release Without Written Consent.....	3
Section V.	Person’s Access to Records	4
Section VI.	Access to the Record by Others	5
Section VII.	Subpoena	5

Section I. Definitions

- A. **“Personal information”** means individual case records; the term includes case notes, reports, documents from other sources, photographs and lists of names.
- B. **“Informed Consent”** means consent given only after having been informed of the purpose, benefits, risks, and alternatives to providing consent. Consent must be in writing.

Commented [SB1]: We need a definition of what constitutes Informed Consent. I had some language but am unable to find it this morning. We have a policy on informed choice but I see this as a little different.

Commented [JS2R1]: Added simple definition

Commented [SB3R1]: discuss need to add reference to consent being in writing.

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Commented [SB4]: I think we need to add something to this introduction about the importance of confidentiality. If not here in a separate section on confidentiality. See comments at end of document.

Commented [SB5]: missing from this section is the requirement to inform applicants and participants of the authority under which information is collected. See, 34 CFR 361.38 (a) (iii) (A)

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Section II. General Policy

- A. Use of personal information will generally be limited to purposes directly connected with the administration of the vocational rehabilitation process. Release of personal information shall comply with provisions of this policy and any Federal or State laws governing the source or type of information requested/released.
- B. All applicants for or recipients of services, and, as appropriate, their representatives shall be informed of the purpose of DVR's request for information, of whether compliance with such request is mandatory, of the possible effects of withholding information, and of situations in which DVR does not need written consent to release information.
- C. All applicants or participants seeking or receiving services and, as appropriate, their representatives, service providers and other interested individuals, shall be informed of the confidentiality of personal information and of the procedures for its release.
- D. Individuals shall be informed of DVR's policy on confidentiality in their native language or as appropriate alternative modes of communication, to assure adequate understanding.

Commented [SB6]: 34 CFR 361.38 (a) (1) (iii)

Commented [SB7]: adequate is a subjective term open to varying interpretation. Is there a different way to phrase this? Perhaps just delete the term itself?

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Section III. Use of the Case Record

- A. Only information needed to fulfill the goal of serving the individual and meeting administrative or legal obligations shall be collected. Such information will not be released without prior informed written consent of the individual or their representative unless in accordance with Section IV below.
- B. Personal information can be used only for the following purposes:
1. Assessing vocational potential;
 2. Determining eligibility or ineligibility;
 3. Developing and implementing the Individualized Plan for Employment;
 4. Processing and delivering specific services;
 5. Evaluating progress and the results of services;
 6. Determining appropriate referrals to other benefit/services programs (with consent of the individual or their representative);
 7. Counselor or program evaluation, accountability, and supervision;
 8. Statistical reporting;
 9. Program-related research which does not reveal the identity of the individual;

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10. Staff training if the individual's identification is removed from the material.

- C. The fact that an individual has a criminal record does not create an exception to the rule that makes records confidential. DVR may not disclose any information about the participant's criminal record to any employer without specific written permission from the participant. This restriction is in force even when the DVR staff member discovers that the participant has not disclosed pertinent information to a potential employer.

Section IV. Release Without Written Consent

A. A counselor must never release applicant or participant information without their informed written consent unless directed to do so by their Regional Manager and DVR's legal counsel. The counselor must alert their Regional Manager if they believe any of the below circumstances apply. Access to the case record without the informed written consent of the applicant, participant, or their representative is generally limited to those individuals directly involved in the administration of the program and for uses listed in Section III above. However, DVR must release sufficient information to comply with mandatory reporting requirements for cases involving the abuse, neglect, or exploitation of children and individuals who are elderly or who have disabilities. Information must be released without consent:

1. When Vermont law creates a duty to warn identified individuals of potential harm to their person or property, or
2. In response to court orders, or
3. To investigate or report criminal activity as required by Federal or State law or regulation.

Only information relevant to the situation shall be disclosed. the case record must document the:

1. The date,
2. The purpose, and content of the report,
3. The name, address and affiliation of the individual to whom the information was released, record;

The applicant, participant, or their representative shall be notified that the information was disclosed.

B. Vermont law requires DVR employees, contractors, and grantees who know of, have received information about, or have reason to suspect abuse, neglect, or exploitation of a DVR applicant or participant, to report that information to **Adult Protective Services (1-800-564-1612)**. Anyone who makes a "good faith" report is immune from any liability for making the report.

C. When an applicant or participant makes a threat to harm a specific person, group of people, or specific property, DVR has a duty to report that threat to the threatened individual (s) or property owner. DVR may also release pertinent information to appropriate personnel/organizations to protect any applicant or participant if they pose a threat to theirself.

Commented [SB8]: Consumers have raised concern about and objection to use of "blanket consent" forms used to access information from treating providers asserting that consent to speak with providers directly requires notice and consent on each occasion where such contact is required and/or a time limit on a consent.

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Commented [SB9]: Revised to remove redundant statements and better sequence the text.

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Before taking any action, DVR staff must consult with the Regional Manager and/or the Division legal counsel.

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Section V. Access to Records By applicants, participants, and representatives

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Commented [SB10]: 34 CFR 361.38(c)

A. A counselor must review everything in a file before making it available or sending it to the applicant, participant, or their representative. Depending on the information, the counselor may need to edit records and/or consult with DVR medical/psychological consultants before releasing any information. Consequently, it is reasonable to take up to five workdays from receipt of a request for records to making them available. DVR's goal is to provide the records as quickly as possible while ensuring confidentiality and ensuring that potentially harmful information is not inappropriately shared with the participant.

Commented [SB11]: I think this paragraph is out of sequence. This section should lead with the right of the individual to request access to their record. I would start with para B and move A to follow

B. An applicant, participant, or representative will have timely access to their case record subject to the following provisions:

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1. A written request is submitted by the applicant, participant, or their representative. The request should include the name, address, and telephone number of the participant, the date, and, if possible, the specific information of interest.
2. If information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization. Information secured by another source for a purpose other than DVR's will not be released; instead, the person will be referred to the source. It is not necessary to obtain permission from service providers to release information which was arranged for or purchased by DVR for its own purposes.
3. Potentially harmful or sensitive information will be reviewed by the counselor's supervisor with input of a medical/psychological consultant, if necessary.
4. Information considered to be potentially harmful may not be provided directly to the person but must be provided through a third party chosen by the person, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the person, in which case the information must be released to the court-appointed representative.
5. Regarding potentially harmful information in which medical or psychological consultation is sought, the consultant must provide DVR with a written opinion and the reasons for the opinion and with suggested conditions under which the participant may review the information, as applicable.
6. Because of financial audit requirements, an individual's case record may include a bill listing several DVR service recipients who participated in a group activity such as VABIR (Vermont Association of Business, Industry, and Rehabilitation) training. This list of names must be either sanitized, i.e., all names and identifying information except the individual's must be cut or blacked out, or the bill must be removed from the file before allowing the individual access to their case record. If the information is removed, the individual must be informed of this action.

7. If an applicant or participant believes that information in their case record is inaccurate or misleading, they may request that the information be amended. If the information is not amended, the request for amendment must be documented in the case record.
- 8.

Section VI. Access to the Record by Others

- A. No individuals, agencies, or organizations not included in or related to Section III or IV of this policy may have access to any information in the case record without the informed written consent of the applicant, participant, or their representative. Release forms must be specific about which records/information may be disclosed. However, the records of minors may be disclosed by granting, in the same manner as the applicant or participant's access (Section V), a parent, guardian, or legal representative of a minor direct access to their medical or psychological records, if those records are arranged for and purchased by DVR.
- B. If the information was originally secured by another source for a different purpose, the information will not be released; the request will be referred to the source.
- C. Potentially harmful medical/psychological information released to the applicant's or participant's attorney, or other advocate must be accompanied by a letter which fully explains the sensitive nature of the information.

Section VI. Subpoena

If a staff person receives a subpoena related to their work for DVR, they must immediately contact their Regional Manager and DVR's legal counsel. The legal counsel will provide directions to all staff regarding any response or testimony. Under no circumstance will a DVR staff person respond to a subpoena or testify in an administrative hearing or court proceeding related to their DVR role, without explicit written permission from the DVR legal counsel.

NOTES:

There is nothing in this policy describing a complaint procedure available when an individual believes that confidentiality has been breached. Since DVR is required to follow AHS (HIPAA) procedures under VT law I suggest creating text referencing that policy with the actual policy included as an appendix e.g.,

Breach of Confidentiality

If an applicant, participant or where appropriate their representative believes that DVR has violated the individual's privacy rights, they may file a complaint with the Vermont Agency of Human Services (AHS) Privacy Officer or the federal Office for Civil Rights (OCR) following the procedures in appendix A.

Commented [SB12]: Need to figure out how to make clear what is required without citation. Here is the actual text of the regulation referenced.

§ 361.47 Record of services.

(a) The designated State unit must maintain for each applicant and eligible individual a record of services that includes, to the extent pertinent, the following documentation:

- (1) If an applicant has been determined to be an eligible individual, documentation supporting that determination in accordance with the requirements under § 361.42.
- (2) If an applicant or eligible individual receiving services under an individualized plan for employment has been determined to be ineligible, documentation supporting that determination in accordance with the requirements under § 361.43.

Commented [JS13R12]: We don't do it elsewhere. Citing the regs is meaningless to staff

Commented [SB14R12]: I agree. I wasn't suggesting the addition of the citation. Rather I was including the citation as a reference to make sure all provisions in that citation are covered in the policy.

Commented [SB15]: Regs (361.38 (a) (2)also reference the right "to charge reasonable fees to cover extraordinary costs of duplicating records or making extensive searches and must establish P&P governing access to records."

Commented [JS16R15]: I don't think we'd ever charge a participant for these costs

Commented [SB17R15]: I wonder then if we should say as a matter of HAVT policy it provides copies of records at no cost to the individual making the request. I think this is better than not addressing the cost issue at all.

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Commented [SB18]: I wonder if we need to amend this to include Court orders.

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Commented [SB19]: The AHS HIPAA and AHS document regarding how to file a complaint can be included as an appendix with or without editing. If notice of confidentiality is not provided during orientation, it should be.

This para could be included as part of the general policy in Section I or there could be a separate section on confidentiality which I would recommend.

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Retaliating against an applicant, participant, or representative for filing a complaint is prohibited. Benefits or services will *not* be affected by any complaint filed with the AHS Privacy Officer or the Office for Civil Rights.

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There is nothing in this policy that covers confidentiality of electronic mail communications such as adding a disclaimer to signature blocks that states DVR cannot ensure privacy of information shared via email and/or information transmitted by DVR staff via email must be encrypted. I think we need to have this incorporated in this policy.

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