

Child Welfare Policy Manual

Questions & Answers

8.4E TITLE IV-E, General Title IV-E Requirements, Confidentiality

1. Question: Under title IV-E, what information can be released? In particular, what information is child welfare information when a child is placed as a result of a juvenile offense?

Answer: The issue of confidentiality is not focussed around the specific nature of the information, but rather the source of the information. No information that is gained from the child welfare agency may be released, except for the purposes identified in 45 CFR 205.50 (a)(1)(i). If the court gains information regarding a juvenile from the child welfare agency, this information must remain confidential. Should the court gain information about a juvenile in a proceeding that does not involve the child welfare agency, the confidentiality provisions of Section 471(a)(8) of the Social Security Act do not apply. Other parties would abide by their own confidentiality restrictions.

Thus, in a court proceeding, if a psychologist is requested to testify on behalf of the child welfare agency, the information is safeguarded under the provisions of Section 471(a)(8). If the psychologist's relationship to the child does not involve the child welfare agency, then Section 471(a)(8) does not apply.

- **Source/Date:** ACYF-CB-PIQ-95-02 (6/7/95)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); 45 CFR 205.50

2. Question: Who can release information? In particular, can parties other than the title IV-E agency (such as the court) release information?

Answer: The release of information which was obtained from the child welfare agency by any party (including the court), except in the same circumstances as identified in 45 CFR 205.50(a)(1)(i), would result in violation of the title IV-E Plan requirements.

- **Source/Date:** ACYF-CB-PIQ-95-02 (6/7/95) (revised 6/6/13)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); 45 CFR 205.50

3. Question: Is any information contained in the child welfare record protected from redisclosure by a court in accordance with title IV-E confidentiality requirements?

Answer: No. The prohibition covers information that is gained from the child welfare agency. The provisions of confidentiality of information cannot be extended to information that the court has gained from sources other than the child welfare agency.

For example, if the police, school officials, or some other party refers a child to the child welfare agency, the child welfare agency must treat information about the referral as confidential. If the child welfare agency informed the court about this referral, court redisclosure of this information would result in the agency's violation of the plan requirements under title IV-E. If the police, the school official, or some other party went to the court directly, then the confidentiality provisions would not apply. If the court became aware of the police, the school, or other party involvement through a source other than the child welfare agency, the confidentiality provisions in Section 471(a)(8) of the Social Security Act and 45 CFR 205.50 would not apply.

- **Source/Date:** ACYF-CB-PIQ-95-02 (6/7/95) (revised 6/6/13)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); 45 CFR 205.50

4. Question: Under what authority may the Department review closed or sealed foster care records, particularly for those children who have been adopted?

Answer: Section 471(a)(8) of the Social Security Act requires a title IV-E plan to provide safeguards restricting use and disclosure of information concerning individuals assisted by the title IV-E programs. It also indicates that a title IV-E plan must provide: Safeguards which restrict the use of information concerning individuals assisted under the Plan to purposes directly connected with... (C) the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in (D), with respect to any activity referred to in such clause), of any information which identifies by name or address any such applicant or recipients except that nothing contained herein shall preclude a State or Tribe from providing standards which restrict disclosures to purposes more limited than those specified herein, or which in the case of adoptions, prevent disclosure entirely.

While the language of section 471(a) (8) (D) provides that States and Tribes may restrict disclosure entirely of adoption assistance records, that subsection, read in its entirety and in harmony with other sections of the Act, indicates that Congress did not intend to restrict access to federal auditors of information essential for audits under the title IV-E programs.

In particular, section 471(a) (8) (D) itself provides for disclosure of information concerning individuals assisted by the title IV-E programs for purposes directly connected with audits conducted by the Federal Government and otherwise authorized by law.

The authority for Federal audits of the title IV-E programs is expressly provided for under section 471 (a)(6). That section requires that a Plan, in order to qualify for FFP for title IV-E, provide that the appropriate agency will make such reports, in such form and containing such information as the Secretary may from time to time find necessary to assure the correctness and verification of such reports.

The legislative history of section 471(a)(8) also reveals that while Congress was concerned about providing safeguards which limited access to information on individuals assisted by the title IV-E programs, it did not intend to hinder the essential function of Federal audits. Thus, while Congress extended to States and Tribes the option of imposing restrictions broader than those imposed in the past on the disclosure of information for the protection of the confidentiality of recipients of adoption assistance, it did not impede essential auditing functions by those authorized to conduct such audits.

Accordingly, in the case of reviews of the eligibility of foster care and adoption assistance claims, the title IV-E agency must make available foster care and adoption records (including sealed foster care and adoption records) in order to document the eligibility of the beneficiaries (children) and related costs of administration. If the requested records cannot or are not made available, all payments made on behalf of the children whose records have not been made available for review and associated costs will be disallowed.

- **Source/Date:** ACYF-PA-85-02 (12/19/85) (revised 6/6/13)
- **Legal and Related References:** Social Security Act - sections 471 (a)(6) and (8) and 479Bb; H.R. Rep. Conf. No. 96-900, 96th Congress 2nd Session 44 (1980)

5. Question: What are the title IV-E confidentiality requirements?

Answer: Title IV-E of the Social Security Act requires that title IV-E agencies provide safeguards to restrict the use and/or disclosure of information regarding children receiving title IV-E assistance. In addition, in accordance with 45 CFR 1355.30 (p)(3), records maintained under title IV-E of the Act are subject to the confidentiality provisions in 45 CFR 205.50. Among other things, 45 CFR 205.50 restricts the release or use of information concerning individuals receiving financial assistance under the programs governed by this provision to certain persons or agencies that require the information for specified purposes. The authorized recipients of this information are in turn subject to the same confidentiality standards as the agencies administering those programs.

To the extent that the records of the State title IV-E agency contain information regarding child abuse and neglect reports and records, such information is subject to the confidentiality requirements at section 106 of the Child Abuse Prevention and Treatment Act (CAPTA).

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/26/97); ACYF-CB-PIQ-98-01 (6/29/98 updated 9/27/11) (revised 6/6/13)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); 45 CFR 205.50; 45 CFR 1355.30; Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106 (b)(2)(B)(viii), (ix), and (x)

6. Question: Will States compromise compliance with title IV-E of the Social Security Act if they comply with the confidentiality requirements in sections 106 (b)(2)(B)(viii), (ix), and (x) of CAPTA?

Answer: Title IV-E requires that States provide safeguards restricting the use and/or disclosure of information regarding children served by title IV-E foster care. Records maintained under title IV-E are to be safeguarded against unauthorized disclosure. The regulation at 45 CFR 205.50 states that the release or use of information concerning individuals applying for or receiving financial assistance is restricted to certain persons or agencies that require it for specified purposes. Such recipients of information are in turn subject to standards of confidentiality comparable to those of the agency administering the financial assistance programs. There may be instances where CPS information is subject both to disclosure requirements under CAPTA and to the confidentiality requirements under title IV-E and 45 CFR 205.50. To the extent that the CAPTA provisions require disclosure (such as in section 106 (b)(2)(B)(ix), the CAPTA disclosure provision would prevail in the event of a conflict since the CAPTA confidentiality provisions were most recently enacted. Where the CAPTA provision is permissive (such as in sections 106 (b)(2)(B)(viii)(I)-(VI)), it allows States to disclose such information without violating CAPTA, but it does not make such disclosure permissible in other programs if it is not otherwise allowed under the other program's governing statute or regulations.

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106; 45 CFR 205.50

7. Question: Some States have enacted laws that allow open courts for juvenile protection proceedings, including child in need of protection or services hearings, termination of parental rights hearings, long-term foster care hearings and in courts where dependency petitions are heard. Questions have arisen about whether courts that are open to the public and allow a verbal exchange of confidential information meet the confidentiality requirements under title IV-E. Do the confidentiality provisions in title IV-E restrict the information that can be discussed in open court?

Answer: No. Section 471(c) of the Social Security Act allows title IV-E agencies to set their own policies relating to public access to court proceedings to determine child abuse and neglect or other court hearings held pursuant to titles IV-B or IV-E. Such policies must, at a minimum, ensure the safety and well-being of the child, his or her parents and family.

- **Source/Date:** 06/19/08 (revised 6/6/13)
- **Legal and Related References:** Social Security Act - section 471 (a)(8) and (c)

8. Question: Is it permissible under title IV-B or IV-E of the Social Security Act (the Act) for the title IV-E agency to disclose to the public information contained in a title IV-B/IV-E agency's records regarding a deceased foster child?

Answer: Yes. Section 471(a)(8) of the Act and section 45 CFR 205.50 require the title IV-B or IV-E agency to provide safeguards which restrict the disclosure of information concerning individuals assisted under the title IV-B or IV-E plan. Upon the child's death, he/she is no longer a recipient of these programs. However, information concerning other family members is still protected if they are recipients and care must be exercised to not release information on such other family members.

- **Source/Date:** 09/05/07 (revised 6/6/13)
- **Legal and Related References:** Social Security Act § section 471, 45 CFR 205.50