

# Federal and State Laws Impacting Data Sharing

## Social Services

### Federal Laws

#### **Title XIX of the Social Security Act**

**42 U.S.C. §§1396-1396v**

**42 CFR Subchapter C**

**51 U.S.C. §2011 et seq.**

**7 CFR §210 et seq.**

#### **Title IV-A of the Social Security Act**

**42 U.S.C. §601 et seq.**

**45 CFR §201 et seq.**

**42 U.S.C. §651 et seq.**

**45 CFR §301 et seq.**

### Medicaid

Title XIX of the Social Security Act established regulations for the Medicaid program<sup>1</sup>, which provides funding for medical and health-related services for persons with limited income. Title XIX contains a number of provisions governing the acquisition, use, and disclosure of Medicaid enrollees' health information.

State participation in Medicaid is voluntary; each state designs and administers its own Medicaid program, funded jointly by the state and the federal government. Despite a state's relative autonomy to develop its own Medicaid program plan, Title XIX predicates federal approval of state plans on the inclusion of certain provisions, and conditions federal financing of the program on the satisfaction of certain requirements.

The use and disclosure of health information must be restricted to purposes directly connected with the plan administration.<sup>2</sup> Medicaid program administration includes: 1) establishing eligibility; 2) determining the amount of Medical Assistance; 3) providing services for recipients; and 4) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the plan.<sup>3</sup>

The single state agency that administers the Medicaid program must have criteria specifying the conditions for release and use of information about applicants and recipients. The information for which the agency must have criteria to safeguard must include:

1. Names and addresses,

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<sup>1</sup> 42 U.S.C. §§1396-1396v

<sup>2</sup> 42 U.S.C. §1902(a)(7)(A); 42 U.S.C. §1396a(a)(7)(A)

<sup>3</sup> 42 CFR §431.302

2. Medical services provided,
3. Social and economic conditions,
4. Agency evaluation of personal information,
5. Medical data, including diagnosis and past history of disease or disability, and
6. Any information received for verifying income eligibility and amount of medical assistance payments, of which information received from the Internal Revenue Service (IRS) or Social Security Administration (SSA) must be safeguarded pursuant to the requirements of those agencies.<sup>4</sup>

These criteria apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials. Access to information concerning applicants or recipients must be restricted to persons or agency representatives who are subject to standards of confidentiality that are comparable to those of the single state agency. The agency is prohibited from publishing names of applicants or recipients. Furthermore, whenever possible, the agency must obtain permission from the individual (or family under certain circumstances) before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility, and the amount of medical assistance payments.

Before information is requested from or released to another bureau or agency (not part of Medicaid program administration) to verify income, eligibility, and the amount of assistance, the Department must execute data sharing agreements with those agencies. Data sharing agreements are also required before the department may request information from or release information to other agencies to identify third-party resources. If an emergency situation prevents the agency from obtaining recipient consent prior to release, the agency must notify the individual or family immediately after supplying the information. Where a court issues a subpoena for a case record or for any agency representative to testify concerning an applicant or recipient, the agency must inform the court of the applicable statutory provisions, policies, and regulations restriction disclosure of information.

Additionally, every provider enrolled in the Medicaid program must agree to keep complete records of the services furnished to Medicaid enrollees and to provide such information to the state upon request.<sup>5</sup> With regard to the transmission of data, states are required to operate an information retrieval system to electronically transmit data (including individual enrollee encounter data)<sup>6</sup> which must be capable of developing patient and provider profiles that provide information about the use of covered service and items.<sup>7</sup>

There must be a plan to evaluate the quality and appropriateness of the care and services furnished to Medicaid enrollee.<sup>8</sup> The state must implement pre- and post-payment claims review procedures that include review of patient data and the nature of the provided service.<sup>9</sup> The state must establish procedures for unnecessary utilization of services and ensuring that payments are consistent with

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<sup>4</sup> 42 CFR §431.306

<sup>5</sup> 42 U.S.C. §1902(a)(27); 42 U.S.C. §1396a(27)

<sup>6</sup> 42 U.S.C. §1903(r)(1); 42 U.S.C. §1396b(r)(1)

<sup>7</sup> 42 U.S.C. §1903(r)(2)(A); 42 U.S.C. §1396b(r)(2)(A)

<sup>8</sup> 42 U.S.C. §1902(a)(33)(A); 42 U.S.C. §1396a(a)(33)(A)

<sup>9</sup> 42 U.S.C. §1902(a)(37)(B); 42 U.S.C. §1396a(a)(37)(B)

efficiency, economy, and quality of care.<sup>10</sup> These procedures must include a screen and review process<sup>11</sup> for every inpatient admission<sup>12</sup> and a requirement that provider hospitals maintain a utilization program<sup>13</sup> that evaluates the medical necessity of all admissions.<sup>14</sup> If the state covers health home services, the plan must include methods for tracking avoidable hospital readmissions and calculating savings that result from improved care coordination and management.<sup>15</sup>

The State has flexibility in what it includes in its State plan dealing with improvements to care, care coordination and management, including but not limited to the interaction between traditional health care and services related to the “social determinants of health” (e.g. housing, food, etc.) in order to assess and minimize the unnecessary provision of Medicaid services.

### **Supplemental Nutrition Assistance Program (SNAP)**

Often referred to as the Food Stamp law or as SNAP, the Supplemental Nutrition Assistance Program federal law safeguards the personally identifiable information provided by applicants for, and recipients of, SNAP benefits. It does not, however, present any undue barriers to information sharing with other state human services systems and specifically gives an exception to the safeguards with Federal assistance programs and Federally-assisted state programs.<sup>16</sup>

By law, there is a close working relationship between the SNAP and Child Support Enforcement agencies because a custodial parent of a minor child is required to cooperate with all paternity and support matters to receive SNAP benefits, and a non-custodial parent is required to cooperate with the child support enforcement state agency to receive SNAP benefits.<sup>17</sup>

Even if information from SNAP is permitted to be shared with other Federal assistance programs and Federally-assisted, means-tested programs for low-income individuals and families, notice must be given to food stamp applicants that information may be provided to other systems and its use by those other systems of the information.

Key components of the SNAP law and federal regulations regarding information sharing include:

- State SNAP agency must execute data exchange agreement with other agencies, specifying information to be exchanged and procedures used for the exchange.<sup>18</sup>
- Privacy statement required for all SNAP applications and re-certifications that information will be verified through computer matching programs and that information may be disclosed to other Federal and state agencies.<sup>19</sup>

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<sup>10</sup> 42 U.S.C. §1902(a)(30)(A); 42 U.S.C. §1396a(a)(30)(A)

<sup>11</sup> Note: The screen and review process must be based on criteria established by independent medical professions. 42 U.S.C. §1902(a)(30)(B)(i); 42 U.S.C. §1396a(a)(30)(B)(i)

<sup>12</sup> 42 U.S.C. §1902(a)(30)(B)(i); 42 U.S.C. §1396a(a)(30)(B)(i)

<sup>13</sup> 42 U.S.C. §1903(i)(4); 42 U.S.C. §1396b(i)(4)

<sup>14</sup> 42 U.S.C. §1861(k)(1); 42 U.S.C. §1395x(k)(l)

<sup>15</sup> 42 U.S.C. §1396n; 42 U.S.C. §1396n

<sup>16</sup> 51 U.S.C. §2020(e)(8)

<sup>17</sup> 51 U.S.C. §§2015(l)(i) and (m)(1)

<sup>18</sup> 7 CFR §272.8(a)(4)

<sup>19</sup> 7 CFR §273.2(b)(4)

- Privacy statement also must contain statement that the collection of information, including Social Security Number, of each household member is authorized by law and information will be used to determine eligibility through computer matching programs.<sup>20</sup>
- Allows for SNAP obtaining current support information directly from state agency in lieu of obtaining information from household.<sup>21</sup>
- State SNAP agencies must provide information to Child Support and SSI programs.<sup>22</sup>
- Use or disclosure of information obtained from food stamp program includes persons directly connected with the administration or enforcement of the programs which are required to participate in the state income and eligibility verification system (IEVS) to the extent the food stamp information is useful in establishing or verifying eligibility or benefit amount under those programs.<sup>23</sup>
- SNAP state agencies may exchange with state agencies administering other programs in IEVS information about food stamp households' circumstances which may be of use in establishing or verifying eligibility or benefits amounts under Food Stamps Program and those programs.<sup>24</sup>
- SNAP agencies may exchange IEVS information with these agencies in other states when determined that same objectives are to be met and these programs are TANF, Food Stamps, Medicaid, Unemployment Compensation, and any state program administered under Titles I, X, XIV (adult categories), or VVI (SSI) of the Social Security Act.<sup>25</sup>
- SNAP State agencies verify Social Security Numbers by submitting to SSA for verification.<sup>26</sup>

Thus, the SNAP federal statutory framework presents a balance of protecting the confidentiality of the information provided to the SNAP for eligibility or recertification purposes with the ability to provide the information to other Federal Assistance Programs and federally-assisted programs for low-income persons.

### **Temporary Aid to Needy Families (TANF)**

Regarding the sharing of information between governmental agencies, TANF is an essential partner with other systems including but not limited to child support enforcement, the Food Stamp Program, employment assistance, child protective services, Medicaid, and Unemployment Compensation.<sup>27</sup> By sharing information about individuals' histories and experience between TANF and other systems, the state can measure its own success.

A key provision of the TANF program is state flexibility.<sup>28</sup> The state is independent of federal control and direction as to the operation of the TANF program except in the areas specifically mentioned in federal statute.<sup>29</sup> For example, the statute prescribes the requirement for work participation and with

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<sup>20</sup> 7 CFR §273.2(b)(4)(i)

<sup>21</sup> 7 CFR §272.8(a)(1)

<sup>22</sup> 7 CFR §272.8(a)(3)

<sup>23</sup> 7 CFR §272.8(a)(2)

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> 7 CFR §273.2(f)(1)(v)

<sup>27</sup> 45 CFR §205.50(a)(1)(i)(A)

<sup>28</sup> 42 U.S.C. §602(a)(1)(A)(iv)

<sup>29</sup> 45 CFR §205.55(a)(5)

maximum time for assistance. The statute does not address information sharing by TANF with other state systems. Thus, the information that the state TANF program collects, how the state TANF program conducts its operations and program, and how the state TANF program shares information with other federally-funded and assisted state programs, is given great latitude under this federal law under the general requirements of The Privacy Act of 1974. (TANF may receive information from other systems that have their own confidentiality requirements and such requirements must be met regarding the specific data.)

Under TANF, there is the mandate to reach out to and share information with other systems. The law specifically discusses the TANF system developing relationships and information sharing processes with domestic violence programs, child support, law enforcement, Medicaid, Social Security, child care and foster care maintenance.<sup>30</sup> At the same time, it must take reasonable steps to restrict the use and disclosure of information about individuals and families applying for and/or receiving TANF benefits.<sup>31</sup>

*A United States Governmental Accountability Office (GAO) report recommends increased data sharing with child welfare programs to improve access to benefits and services. Relative caregivers were of specific concern in the findings, recommending coordination efforts including collocating TANF and child welfare services and having staff from each agency work together to help relative caregivers' access services. The GAO reports that, although it would be beneficial, information and data sharing between TANF and child welfare does not occur consistently, hindering the relatives' access to available benefits. Half of the states reported obstacles to sharing data including but not limited to confidentiality and privacy concerns.<sup>32</sup>*

From the standpoint of federal barriers or prohibitions to information sharing of individual information, TANF is capable of collaborating with other state programs to determine the information to be shared, the legitimate governmental purpose for sharing, with whom and when to share the information, and the mechanism for protecting the information once shared.

Key components of the TANF law regarding information sharing include:

- Permits the design of the TANF program to reach out to and work in partnership with other state systems, including but not limited to education, domestic violence and rape programs, child abuse and neglect, and teenage pregnancy prevention programs.<sup>33</sup>
- Permits aligning closely with the state's system that establishes paternity and child support systems as a condition for individuals to be eligible to receive TANF benefits (with certain exceptions).<sup>34</sup>
- To collaborate with the state's Medicaid system.<sup>35</sup>

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<sup>30</sup> 42 U.S.C. §602(a)(1)(A)(vi)

<sup>31</sup> 42 U.S.C. §602(a)(7)(A)(i)

<sup>32</sup> GAO, *TANF and Child Welfare Programs: Increased Data Sharing Could Improve Access to Benefits and Services*, GAO-12-2 (Washington, D.C.: Oct. 7, 2011)

<sup>33</sup> 45 CFR §205.50(a)(1)(i)(A)

<sup>34</sup> 45 CFR §205.50(a)(1)(i)(A)

<sup>35</sup> 45 CFR §205.55(a)(5)

- To provide information to Federal, state, or local law enforcement upon written request and, if provided specific information of a possible TANF recipient being a fugitive felon or probation or parole violator, to perform the official duties in locating or apprehending an individual.<sup>36</sup>
- To create and maintain individual responsibility plans and require recipients to perform appropriate functions, including but not limited to insuring that school-age children attend school, maintain certain grades and attendance, immunizations, attending parenting and money management classes, employment related activities, and/or undergo appropriate substance abuse treatment.<sup>37</sup>
- Provide quarterly disaggregated reports on families receiving TANF and SSI benefits.
- Provide quarterly disaggregated reports on families receiving TANF and subsidized housing, Medicaid, SNAP, or subsidized child care.
- Take reasonable steps to restrict the use and disclosure of information about individuals and families receiving TANF benefits.

Thus, the statutory framework presents a balance of protecting the information provided to the TANF program versus providing an efficient, effective and coordinated process yielding the maximum benefits to individuals. States must make decisions, based on its own laws, regarding when, why, with whom, and how to share TANF information with other federally-funded and assisted systems. Many states link data and information sharing within TANF, Food Stamp Program, and Medicaid, and also link TANF data to job opportunities, child care and basic skills, Unemployment Insurance benefits, and child support enforcement.

### **Child Support**

Unless otherwise specifically authorized in Title IV-D of the Social Security Act<sup>38</sup>, the personal information that the system collects is confidential and cannot be shared. One reason for this legislative mandate is the child support system's access to very sensitive and statutorily protected information, including but not limited to data from the Internal Revenue Service (IRS). The system requires strict security requirements. At the same time, the law provides interface requirement in its management system, for example, the state's plan for child support must include certain information sharing with TANF, Medicaid, SNAP, public housing, higher education (for unpaid student loans), the unemployment compensation system, and the foster care system.

States are also required to maintain statewide automated data processing and information retrieval systems.<sup>39</sup> Such automated data systems must be used for information comparison activities that shall include:

Exchanging information with state agencies (of the State and other States) administering programs funder under part A (TANF) programs operated under a State plan approved under

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<sup>36</sup> 42 U.S.C. §608(a)(9)(A)(i) & (ii)

<sup>37</sup> 42 U.S.C. §608(b)(2)(A)(ii) &(v)

<sup>38</sup> 42 U.S.C §§651 et seq.

<sup>39</sup> 42 U.S. C. §454A

Title XIX (Medicaid), and other programs designated by the Secretary (of HHS) as necessary to perform State agency responsibilities under this part and under such programs.<sup>40</sup>

Subject to safeguards on privacy and information sharing, there can be access to records of other State and local government agencies **by** the child support system, including vital statistics, tax and revenue records, real and titled personal property, occupational and professional licenses, ownership and control of corporations, partnerships, and other business entities, employment security records, public assistance programs, motor vehicle department, and corrections.<sup>41</sup> The personally identifiable information is provided by other systems to the child support system, but the data exchange is not reciprocal. The information provided back from the child support system is not identifiable. The information is then safeguarded and maintained solely by the child support system unless separately verified from other, less secure systems or methods.

The Office of Child Support Enforcement (OCSE) with the U.S. Department of Health and Human Services maintains the Federal Parent Locator Service (FPLS), which includes the National Directory of New Hires (NDNH) located at the Social Security Administration's (SSA) National Computing Center (NCC) and information from the State Directory of New Hires (SDNH), as well as the Federal Case Registry (FCR). The Office of Child Support Enforcement enters into Memorandums of Understanding (MOU)/Computer Matching Agreements (CMA) with federal or state agency that is authorized to receive FPLS information, including data from the NDNH. Authorized data users are primarily state child support agencies and those federal and state needs-based programs specified by statute. The MOU/CMA specifies the purpose for sharing information, the legal authority, the permitted purposes, the information that will be compared, the specific data elements that will be disclosed, the security safeguards required for the recipient agency to store and process NDNH data, and the expected results of the match. The NDNH also contains information from the Multistate Financial Institution Data Match (MSFIDM) and the State Financial Institution Data Match (FIDM), both of which contains highly confidential, personal information.

*“Our most vulnerable children, those in the child welfare system, need an extra hand to help them thrive in the face of difficult circumstances. Perhaps surprisingly to some, that extra helping hand can come from the child support community. When a new home, temporary or permanent, is needed for a child, one of the first places child welfare workers look is to other family members who might be able to care for the child. Child support can be a tremendous resource for locating the child’s other parent, usually the father, whose contact information may not be available from the child’s mother. If the child’s family has a current or former welfare case, if the parents have been divorced, if paternity has been established or if the child is on Medicaid, the child support program probably has information about the child’s other parent. It is worth the time and effort for child welfare and child support agencies to build relationships*

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<sup>40</sup> 42 U.S.C. §654a(f)(3)

<sup>41</sup> 42 U.S.C. §666(c)(1)(D)(i)

*and develop procedures to make sure that, when appropriate, fathers and other paternal kin have the opportunity to take responsibility for their children in need.*"<sup>42</sup>

## **State Laws**

### **C.G.S. §17b-90**

State law basically mirrors the federal laws in that it also prohibits any person to "solicit, disclose, receive or make use of, or authorize, knowingly permit, participate in or acquiesce in the use of, any list of the names of, or any information concerning, persons applying for or receiving assistance from the Department of Social Services or persons participating in a program administered by said department..."<sup>43</sup>

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<sup>42</sup> Vicki Turetsky, Commissioner, Office of Child Support Enforcement, Administration for Children and Families, U.S. Department of Health and Human Services, QIC News, National Quality Improvement Center on Non-Resident Fathers and the Child Welfare System, Quarterly Newsletter, Summer 2009, page 1.

<sup>43</sup> C.G.S. §17b-90