



## CONFIDENTIALITY OF CHILD PROTECTIVE SERVICES RECORDS

By Nina Williams-Mbengue

A physician notifies child protective services that she suspects a child in her care is being physically abused. They then begin an extensive investigation, interviewing the child's family, school and neighbors. If abuse is confirmed, child protective services enters the case into the state's central registry and begins to develop a plan to treat the family and prevent more abuse. Can the physician find out whether an investigation was conducted? Who can see the central registry information? What type of information is the treatment agency allowed to see?

State lawmakers have responded to these questions with laws to protect the privacy of children and families while allowing state agencies and other organizations to gather the necessary information. Most states allow child protective services, law enforcement, physicians, attorneys and the courts access to confidential records, including the central child abuse registry, in order to investigate reports of abuse, treat victims and prosecute perpetrators.

### Federal Action

Provisions governing confidentiality and sharing information in the federal Child Abuse Prevention and Treatment Act guide state legislation. In order for states to receive federal funds for their child abuse programs, the law requires that states keep child protective services records confidential. Congress reauthorized the act in 1996 and made the confidentiality provisions more specific. With provisions to protect the identities of children and families, the law requires states to enact legislation authorizing disclosure of confidential information to:

- People who are subjects of reports,
- Federal, state and local governments that need the information to protect children,
- The public, in cases of a child fatality or near fatality,
- Child abuse citizen review panels (panels are not allowed to release identifying information, but the state has the option of deciding what types of information may be made public),
- Child fatality review panels,
- A grand jury or a court,
- Other entities specifically authorized by the legislature.

The federal law requires that recipients of information not disclose information to others. States may, but are not required to, disclose the identity of those who report child abuse. Finally, states are required to expunge records of unsubstantiated or false reports that are accessible to the public or that are used for employment screening or background checks.

### State Actions

Many states have enacted legislation mandated by the new federal provisions. Legislators want to safeguard the privacy of children and their families, but are also concerned about oversight and accountability of the child protection system. Most states already authorize sharing of information among professionals and agencies involved in child abuse cases. These provisions usually allow law enforcement, attorneys, prosecutors or guardians-ad-litem, multi-disciplinary or child protection investigation teams, physicians and agencies responsible for

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providing treatment to abused children to see the information.

States that require public disclosure of information on a child fatality or near-fatality case include Arizona, Arkansas, Colorado, Florida, New York, Nevada and Washington. New York's legislation came about when Awilda Lopez beat her 6-year-old daughter, Elisa Izquierdo, to death in 1995. Elisa's case was known to child protective services and other agencies because her drug-addicted mother had repeatedly abused her. However, due to caseworker error and little or no sharing of information, nothing was done to help her. In response to the tragedy, lawmakers enacted the Child Protective Services Reform Act of 1996, known as Elisa's Law, to require that child fatality information be made available to state and city auditors and the public, and that information be shared among those investigating a case.

Other agencies allowed access to confidential records and reports

Coroners and medical examiners  
California, Georgia, Illinois, Indiana, Kentucky,  
Minnesota, Montana, South Carolina  
Schools and departments of education  
Arizona, Georgia, Illinois, Kentucky, Maine, Missouri,  
Montana, New Hampshire, Virginia  
Probation and parole agencies or  
departments of corrections  
Louisiana, Illinois, New York, Rhode Island, Indiana  
Tribal agencies  
Maine, Montana, New Mexico, South Carolina, Wisconsin  
Child fatality review boards  
Kansas, Kentucky, Missouri, Montana, South Carolina  
State auditors  
Colorado, Connecticut, Florida, New York, Oregon,  
Pennsylvania

Source: NCSL

In addition to state and local agencies and officials, many states provide a variety of interested private citizens access to confidential reports and records, excluding the identity of children, families and reporters of abuse. Reporters of child maltreatment are allowed access to certain types of information, such as whether an investigation was conducted and its outcome, in Arkansas, California, Connecticut, Georgia, Iowa, Maine, Massachusetts, Mississippi, Nebraska, New Hampshire, New York, North Dakota, Ohio, Pennsylvania and Rhode Island. A large number of states allow alleged perpetrators, parents and children access to records or reports. Prospective foster and adoptive parents have access to records of children in Arizona, Arkansas, California, Colorado, Georgia, Maine, New Mexico, Pennsylvania, South Carolina, South Dakota, Texas and Wisconsin.

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Other areas of disclosure of confidential records and reports include sharing with or disclosing information to entities such as grand juries, departments of juvenile justice, child advocacy centers, health departments, division of administrative hearings, foster care and adoption licensing agencies, and child protective service agencies and law enforcement in other states.

### Selected References

- Bussiere, Alice; Abigail English; and Catherine Teare. *Sharing Information: A Guide to Federal Laws on Confidentiality and Disclosure of Information for Child Welfare Agencies*. Washington, D.C.: The ABA Center on Children and the Law, 1997.
- U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect. *Child Abuse and Neglect State Statute Series: Volume II, Central Registries*. Washington, D.C.: U.S. Department of Health and Human Services, 1997.

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