

Records

Purpose:

To ensure proper filing, retrieval, confidentiality, and public access of records, and to outline the procedure for destruction of any records, as applicable by statute.

Policy:

A county board shall adopt written policies and procedures which address confidentiality, access, duplication, dissemination, and destruction of personnel records, as well as records of individuals served in accordance with the Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d, as in effect on the effective date of this rule and as applicable, the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, as in effect on the effective date of this rule. Records shall be kept in accordance to O.R.C. § 149.43 and the Personal Information Systems Act, O.R.C. Chapter 1347.

It is the policy of the HCBDD to provide prompt and open access to all public records maintained by the HCBDD in accordance with Ohio Revised Code Section 149.43 (Ohio Public Records Act). Public requests will be met with openness that leads to a better-informed community, which enhances the relationship between the community and the Board. The HCBDD is dedicated to responding to all public records requests in a timely and efficient manner. The Superintendent is accountable for release of public records of the HCBDD.

Authority

FERPA

20 U.S. Code § 1232g

HIPAA

42 U.S. Code § 1320d

CFR

34 CFR § 99.20

34 CFR § 99.21

34 CFR § 99.22

45 CFR § 164.502(f)

45 CFR § 164.524(c);(e)

45 CFR § 464.524(b)

OAC

5123-4-01

5123-11-01

3301-51-04

ORC

149.43

1347

1347.08(A)(2)

1337.13
3109.051(H)
5126.044

Procedure

Definition of Record

Unless otherwise exempt, a public record is any “record” kept by a public office which:

- contains information stored on a fixed medium (e.g., paper, computer, film, etc.)
- is created, received or sent under the jurisdiction of a public office; and
- documents the organization, functions, policies, decisions, procedures, operations or other activities of the organization.

General Records Management

Records are maintained in an appropriate storage form (paper, digital, etc.) and organized using standard record keeping systems (alphabetical, chronological, etc.) for efficient retrieval and return. Access is restricted to those with an appropriate need. Passwords are assigned for electronic records. Information Technology (IT) maintains backup copies of electronic records for disaster recovery and ensures data is formatted to new hardware or software systems used by the county board.

Retention and Destruction of Records

All records are retained and destroyed according to the Records Retention Schedule (RC-2) as defined by The Ohio History Connection – LGRP. Records that are more than 50 years old are verified with the LGRP, even if not on the RC-2. Initially, the LGRP determines the record types requiring a Certificate of Records Disposal (RC-3). After the One-Time Disposal of Obsolete Records (RC-1) has been reviewed by the LGRP and the Auditor of State, an RC-3 is no longer required and records are destroyed after being approved by the Records Officer following the RC-2 Retention Schedule. Physical documents transferred to digital format and/or that have reached the maximum retention period are destroyed by shredding and electronic records are deleted by the Records Coordinator. Prior to digital record destruction of individuals served, notice of the impending destruction is mailed to individuals or their appropriate designee. A notice is also placed in the local newspaper and after 30 days, records are destroyed.

Public Records

Public records include any records kept by the HCBDD; exceptions include but are not limited to Protected Health Information (PHI), medical records, trial preparation records, confidential law enforcement records, adoption, probation and parole proceedings, and release of records prohibited by Ohio or federal law. The Records policy is posted prominently for public viewing. The public record requested must be a specific public record in existence at the time of the request.

Requests for public records are promptly referred to and documented by the Records Coordinator. Requests may be verbal or written and must be sufficiently clear to permit identification of the records. If needed, assistance is provided to help further clarification. After being informed that it is strictly voluntary, the requestor may be asked to make the request in writing, to provide their identity or the intended use of information for clarification. Every attempt is made to provide as much of a public record as possible and when necessary, only the least amount of information is withheld.

The Records Coordinator coordinates with the HIPAA Privacy Officer and the appropriate department manager to fulfill the request and review the records prior to release to prevent disclosing protected and exempted information, and to complete any required redactions. Records relating to litigation or investigation are placed on hold for review to ensure protection required by court and administrative rulings, and state and federal law.

The Superintendent has final review of all records, and seeks legal counsel, as needed, before approving records for release. Any denial of a public records request (including redactions) includes an explanation of the denial and supporting legal authority. If the submitted request was written, the explanation provided is written.

Public records are promptly prepared and made available for inspection to any person, at reasonable times, during regular business hours. Original documents are not permitted to leave the control of the HCBDD but may be inspected under supervision. The HCBDD does not set a fixed time to respond to a request and there are no restrictions on the number of public records requested or the number of public records to be made available. Payment in advance is required for the cost of copying, delivering, postage and transmission of records. The requestor is charged HCBDDs cost for letter and legal sized copies. Larger copy costs are based upon size and media costs are based upon media type. The requestor is not permitted to make their own copies.

Media requests for public records are referred to the Public Information Officer and are fulfilled according to the Public Awareness/Media Policy.

A copy of the most recent edition of the Ohio Sunshine Laws Manual is available via the Ohio Attorney General's website (www.OhioAttorneyGeneral.gov/YellowBook).

Protected Health Information (PHI) Records & Requests

Records regarding individuals eligible for services and/or supports or who currently or previously received services and/or supports by the HCBDD are not public records and are released according to Protected Health Information (PHI) procedures, state and federal law.

Individuals supported by the HCBDD, and authorized representatives, have the right to access and/or inspect the PHI contained in the individual's record, subject to any limitations imposed by law. Authorized representatives are recognized as: the parent of a child younger than 18 years old; the non-custodial parent of a child younger than 18 years old; an individual who is recognized through durable power of attorney to have authority to act on the behalf of the individual; the legal guardian of the individual; and/or any person per a court order. Requests

may be denied if the HCBDD has evidence of a court order or other legally binding document revoking or restricting the requestor's rights to view the individual's record, or the HCBDD has reason to believe parental rights are in dispute. Examples include, but are not limited to, revocation of parental rights or a court ordered restriction of a non-custodial parent's access to records. Requestors may be asked to verify their identity, attest to authorized representative status via an affidavit, and/or provide proof of legal authority to request records for the individual.

Upon request, individuals and authorized representatives are provided a list of the types and locations of records maintained or used by the HCBDD.

Request for PHI

Routine requests for PHI information from an individual or child who is currently receiving services and/or supports are promptly referred to the Service & Support Administrator (SSA), the Assistant to the Director (BVS) or the Service Coordinator (EI). Examples of routine requests include requests for a copy of an Individual Support Plan (ISP), an Individualized Family Service Plan (IFSP) or an IEP (Individual Education Program), an assessment, evaluation, progress report, or a copy of a particular document for another agency required for continuity of care such as Opportunities for Ohioans with Disabilities (OOD) or Jobs and Family Services (JFS), Child Protective Services (CPS), physician offices, medical facilities, schools, etc. If the requestor is anyone other than the individual, parent, guardian or chosen representative, an Authorization for Release of Information (ARI) form is confirmed to be on file or obtained.

Non-routine requests for PHI information are referred to the Records Coordinator. Examples of non-routine requests include requests for individuals who no longer receive services and/or supports, or who were denied services and/or supports through the intake process, or for requests for entire copies of SSA, EI, or BVS files for individuals currently receiving services and/or supports.

The individual or authorized representative is granted access to their records in any of the following ways per request: by inspection, photocopy, or electronic format. The HCBDD provides a private room for the individual or authorized representative to inspect the records under the supervision of a HCBDD staff member who ensures that the record is not altered. Copies are to be made only by HCBDD employees.

Requests for records are documented either via fax, email or case notes by the staff member completing the request and notification is sent to the Records Coordinator of each fulfilled request (other than for the individual or authorized representative). Notification includes the party accessing or receiving copies of record, including the name of the requestor, the date access or document was given, content provided, and the purpose of the request. The Record Coordinator uses the notifications to maintain a record of the parties with access to records.

Correspondence to the requestor lists the documents provided and explains any redactions. A copy is kept on file. Non-routine requests are signed acknowledging receipt by the requestor, if picked up in person or delivered. If mailed, the requestor is asked to acknowledge receipt by

returning a signed acknowledgement in a postage-paid return envelope, unless mailed via certified mail. A fax confirmation report is used for faxes. When documents are emailed, software is used that requires signature for receipt. The HCBDD does not charge for copies of PHI records.

When an individual receiving HCBDD supports dies, upon written request, the HCBDD provides any records in the county board's possession concerning the individual if the records are necessary to administer the estate of the individual who is the subject of the records, to the executor or administrator of the individual's estate; and to the guardian of the individual who is the subject of the records or if the individual had no guardian at the time of death, to an individual in the first applicable of the following categories; the individual's spouse; the individual's children; the individual's parent; the individual's brothers or sisters; the individual's uncles or aunts, the individual's closest relative by blood or adoption; or the individual's closest relative by marriage. The HCBDD provides the records no later than 30 days after receipt of the request. All protections of a deceased individual's PHI remain in effect through the HCBDDs mandated record retention period, or until the individual has been deceased for fifty years, whichever is sooner.

Record Amendment

An individual, parent, guardian, an authorized, or chosen representative may request amendment of PHI about the individual which they believe is inaccurate, misleading, or violates the rights of the individual, and is held by the HCBDD or any business associate. The amendment request must be in writing and is subject to the requirements set forth in these procedures.

The following may occur:

1. The HCBDD accepts the requested amendment, in whole or in part, and makes the appropriate amendment, informing the individual and other persons and entities who have had access to the information.
2. If the HCBDD believes the existing record is correct, it may deny the amendment request. If an amendment request is denied, the HCBDD gives written notice in plain language which includes the following:
 - a. the basis for the denial,
 - b. the individual's right to submit a written statement disagreement,
 - c. the individual's right to request that the HCBDD provide the request and the denial with any future disclosures of the PHI that is the subject of the amendment; and
 - d. the individual's right for a hearing to challenge the information.
3. The individual receives the Explanation Form for Complaint or Appeal of Adverse Action if dissatisfied with the denial. If the individual submits a statement of disagreement the SSA, Service Coordinator (EI) or Records Coordinator inserts this statement into the appropriate portion of the record.

Parents or eligible students may request an amendment to a student's record if they believe the information is inaccurate, misleading or in violation of the student's right of privacy. The

HCBDD decides whether to amend the record within a reasonable time after the request is received.

The following may occur:

1. The HCBDD decides not to amend the record but will inform the parent or eligible student of the decision and of his or her right to a hearing. If the parent or student requests a hearing it is held within a reasonable time after receiving the request.
2. If a hearing is requested, the HCBDD notifies the parent/student of the date, time and place reasonably in advance of the hearing. The hearing may be conducted by anyone, including an official of the HCBDD who does not have a direct interest in the outcome of the hearing. The parent/student is given a full and fair opportunity to present evidence as to why the information is inaccurate, misleading or in violation of the student's right of privacy. The parent/student may be assisted or represented by one or more individuals of his or her own choice, including an attorney.
3. The HCBDD makes its decision in writing within a reasonable period of time after the hearing. The decision must be based solely on the evidence presented at the hearing and must include a summary of the evidence and reasons for the decision.
4. If the HCBDD decides, as a result of the hearing, that the information in the record is not inaccurate, misleading or in violation of the privacy rights of the student, it informs the parent/student of the right to place a statement in the records commenting on the contested information and stating why he or she disagrees with the decision. The statement is placed in the student's record and is kept in the record for the life of the record and is disclosed whenever it discloses the portion of the record to which it relates.

Board Approved: 6/17/02, 4/23/15, 4/2/19, 5/24/21

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