

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY	
	Chapter 4: Assessment Section 17: Accessing Child's Medical, Mental Health, and Substance Use Records	
	Effective Date: March 1, 2025	Version: 3

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POLICY OVERVIEW

Obtaining an alleged child victim's medical, mental health, and/or substance use records is important when conducting a Child Abuse and/or Neglect (CA/N) assessment. The Indiana Department of Child Services (DCS) obtains consent, as required, when seeking to obtain a child's medical, mental health, and/or substance use records.

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PROCEDURE

DCS is required to obtain written consent from the alleged child victim's parent, guardian, or custodian prior to obtaining any:

1. Mental health assessment or treatment records;

Exception: Per IC 16-39-2-6(b)(10)(F), a mental health record may be obtained without consent if the record was the basis of the report for CA/N.

2. Medical records for the alleged child victim who was not a part of a CA/N assessment; and
3. Alcohol use and/or substance use assessment or treatment records.

Exception: If the alcohol/substance use records pertain to treatment that the child received through their own voluntary consent, that child may consent to the release of the records without parent, guardian, or custodian consent.

DCS is **not** required to get consent from the alleged child victim's parent, guardian, or custodian or the child **prior** to accessing an alleged child victim's medical (**physical health**) records if the records pertain to an examination or treatment that:

1. Occurred as part of a CA/N assessment; or
2. Resulted in a CA/N report by a medical professional.

The Family Case Manager (FCM) will:

1. Seek required signatures on the Consent to Release Medical, Mental Health and/or Substance Use Records form to facilitate the release of any necessary medical, mental health, and/or substance use records of an alleged child victim; and
2. Consult with the DCS Staff Attorney to seek a court order if a required consent is denied.

The DCS Staff Attorney will seek a court order if:

1. An alleged child victim's parent, guardian, or custodian does not give consent to the release of the alcohol/substance use records;
2. An alleged child victim does not consent to the release of the alcohol/substance use records pertaining to treatment that the child received through their own voluntary consent; or
3. An alleged child victim's counselor asserts the "victim counselor privilege" and denies DCS access to the child's mental health records.

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RELEVANT INFORMATION

Definitions

N/A

Forms and Tools

- [Consent to Release of Medical, Mental Health and/or Substance Use Records \(SF 51128\)](#)
- [Consent to Release of Medical, Mental Health and/or Substance Use Records \(SF5792\) \(Spanish version\)](#)

Related Policies

N/A

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LEGAL REFERENCES

- [42 USC 290dd-2: Confidentiality of records](#)
- [45 CFR 164.512\(b\)\(1\)\(ii\): Standard: Uses and disclosures for public health activities](#)
- [IC 12-23-12-1: Notification or consent of parents or guardians; treatment in absence of notification](#)
- [IC 16-39-2: Chapter 2. Release of Mental Health Records to Patient and Authorized Persons](#)
- [IC 16-39-2-6\(b\)\(10\)\(F\): Disclosure without patient's consent; interpretation of records; immunities](#)
- [IC 31-32-11-1: Admissibility of privileged communications](#)
- [IC 35-37-6: Chapter 6. Privileged Communications and Victim Counseling](#)

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PRACTICE GUIDANCE- DCS POLICY 4.17

Practice Guidance is designed to assist DCS staff with thoughtful and practical direction on how to effectively integrate tools and social work practice into daily case management in an effort to achieve positive family and child outcomes. Practice Guidance is separate from Policy.

Health Insurance Portability and Accountability Act (HIPAA)

Federal code, 45 CFR 164.512(b)(1)(ii), makes exceptions to HIPAA for Child Protective Services (CPS) investigations. The Act states: "A covered entity may disclose protective health information for the public health activities and purposes described in this paragraph to...A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect."

Victim Counselor Privilege

Criminal procedures outlined in Indiana Code (IC) 35-37-6: Privileged Communications and Victim Counseling, establish victim counselor privilege related to "confidential communications" between a victim and a victim counselor. All victim counselors remain bound by the mandated reporting statutes pertaining to Child Abuse and/Neglect (CA/N). Thus, victim counselor privilege cannot be applied to the reporting of suspected CA/N. Anytime a victim counselor has reason to believe a child is a victim of CA/N, the counselor must make a report to the Department of Child Services (DCS). However, after a report has been made, the victim counselor may assert the victim counselor privilege to prevent the disclosure of information and records during the course of the assessment.

Voluntary Consent to Treatment and Release of Related Records by a Minor

Per IC 12-23-12-1, a minor who voluntarily seeks treatment for alcoholism, alcohol abuse, or drug abuse from the Family and Social Services Administration (FSSA)/Division of Mental Health and Addiction (DMHA) or a facility approved by FSSA/DMHA may receive treatment without notification or consent of the parents, guardians, or person having control or custody of the minor. DCS interprets this code, along with 42 USC 290dd-2, to mean that a minor can consent to the release of records that pertain to treatment for which the minor voluntarily consented.

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