

# Sharing Protected Health Information and Substance Use Disorder Information with County Departments of Social Services

## What is the purpose of this resource?

Departments of Social Services of North Carolina counties (DSS) and/or *guardians ad litem* (GAL) may request parents' treatment information from health care providers (Providers) to assist in making permanency planning decisions (Planning Decisions) for minors in foster care. Delays in making Planning Decisions can occur when DSS/GALs requests protected health information (PHI) and/or substance use disorder (SUD) information from Providers, and the disclosed PHI/SUD information is not substantial enough to help guide Planning Decisions.

Specifically, Providers generally share PHI/SUD information indicating when the parent has engaged in their treatment. To make better Planning Decisions, DSS/GALs need to understand parents' treatment plans, how parents are engaging in their treatment, and the parents' progress towards their goals.

The information below should be used to better understand the law and the benefits of Providers having a thorough informed consent process in place for parents with DSS/GAL involvement.

## When am I allowed to share parents' PHI with DSS/GALs?

Parents' PHI **must be** disclosed to DSS/GALs:

- When necessary to report suspected child abuse, neglect, or dependency;
- Upon written request of DSS, when relevant to investigation of suspected child abuse, neglect, or dependency or provision of child protective services;
- Upon request of DSS, for protection or treatment of juvenile in pending juvenile case; and
- Upon request of the GAL in a pending juvenile action.

## When am I allowed to share parents' PHI with a court/administrative tribunal?

Parents' PHI must be disclosed when required by a court/administrative tribunal order (this does not include a subpoena).



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## When am I allowed to share parents' SUD information with DSS/GALs?

Below are the guidelines for disclosure of parents' SUD information to DSS/GALs:

- Parents' SUD information must be disclosed to DSS, when necessary to report suspected child abuse, neglect, or dependency;
- Parents' SUD information may not be disclosed, without their informed consent or court/administrative tribunal order (this does not include a subpoena), to DSS for investigation of suspected child abuse, neglect, or dependency or provision of child protective services; and
- Parents' SUD information may not be disclosed, without their informed consent or court/administrative tribunal order (this does not include a subpoena), to the GAL in a pending juvenile action.

## When am I allowed to share parents' SUD information with a court/administrative tribunal?

Parents' SUD information may not be disclosed, without their informed consent or court/administrative tribunal order (this does not include a subpoena), to a court/administrative tribunal. Regarding a court/administrative tribunal order, Parents' SUD information must be disclosed when required by a court/administrative tribunal order (this does not include a subpoena) and after:

- Notice to the parent and the Provider (if the Provider organization is a federally assisted program that provides SUD diagnostic and treatment services or received the SUD information from such a provider);
- Opportunity for a hearing;
- In camera review of the SUD information by the judge;
- A finding of good cause for disclosure of the SUD information by the judge; and
- Limitations on use and redisclosure are established by the judge.

## What's the difference between a court/administrative tribunal order and a subpoena?

A court/administrative tribunal order is a verbal or written command, direction, or instruction delivered or signed by a judge. A subpoena, on the other hand, is different from an order. A subpoena is a written command to appear before/submit documents to a court or administrative tribunal and is issued by someone other than a judge, such as a court clerk or an attorney in a case. Whether a document is a court/administrative tribunal order or a subpoena is usually identified in the document title.

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## What's informed consent?

Informed consent is a parent's written authorization for disclosure of PHI and/or SUD information. To be valid, the authorization (Authorization) must be:

- In writing;
- Voluntary; and
- Informed—that means the individual signing the Authorization must understand what PHI and/or SUD information will be exchanged, with whom it will be shared, and for what purpose.

## What should I minimally understand about Authorizations?

- An Authorization to disclose PHI and/or SUD information permits, but does not require, the Provider to disclose the information. However, disclosure is mandatory when the parent requests disclosure to an attorney.
- Disclosure of PHI and/or SUD information must be consistent with the Authorization. This means that Providers are bound by the statements provided in the Authorization.
- A parent may revoke an Authorization at any time except to the extent that the Provider has taken action in reliance on the Authorization.
- Providers should consider discussing with parents and writing in the following phrase in Authorizations for disclosure of PHI and/or SUD information to DSS, "sharing treatment plan and progress towards goals to assist a North Carolina County Department of Social Services in making permanency planning decisions for minors in foster care."

## Who can I contact if I have questions?

If you have specific privacy questions about sharing PHI and/or SUD information with any DSS, please contact Vaya's Privacy Officer at [PrivacyOfficer@vayahealth.com](mailto:PrivacyOfficer@vayahealth.com).

