

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY	
	Chapter 4: Assessment	Effective Date: July 1, 2010
	Section 17: Accessing Child's Medical, Psychological, and Substance Abuse Records	Version: 2

STATEMENTS OF PURPOSE

The Indiana Department of Child Services (DCS) is not required to get consent from the parent, guardian, 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 Child Abuse and/or Neglect (CA/N) assessment; or
2. Resulted in a CA/N report by a medical professional.

Note: This policy complies with the Health Insurance Portability and Accountability Act (HIPAA) regulations. See [Related Information](#) for details.

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

1. Any mental health assessment or treatment records;
2. Any medical records for the alleged child victim that were not a part of a CA/N assessment and
3. Any alcohol use and/or substance abuse assessment or treatment records;

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

DCS will seek a court order if:

1. An alleged child victim's parent, guardian, or custodian does not give consent;
2. An alleged child victim does not consent to the release of alcohol use/substance abuse records pertaining to treatment that the child received through his or her 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.

Code References

1. [IC 16-39-2: Chapter 2. Release of Mental Health Records to Patient and Authorized Persons](#)
2. [IC 35-37-6: Privileged Communications and Victim Counseling](#)
3. [IC 31-32-11-1: Admissibility of privileged communications](#)

PROCEDURE

The Family Case Manager (FCM) will:

1. As necessary, seek required signatures on the form, [Consent to Release Medical, Mental Health and/or Substance Use Records \(SF 51128\)](#) to facilitate the release of medical (physical health) records of an alleged child victim;
2. Seek required signatures on the form, [Consent to Release Medical, Mental Health and/or Substance Use Records \(SF 51128\)](#) to facilitate the release of **mental health**, **alcohol use** and/or **substance use** records of an alleged child victim; or
3. Seek a court order as needed if a required consent is denied.

PRACTICE GUIDANCE

N/A

FORMS AND TOOLS

1. [Consent to Release of Medical, Mental Health and/or Substance Use Records \(SF 51128\)](#)

RELATED INFORMATION

Health Insurance Portability and Accountability Act (HIPAA)

[45 CFR 164.512\(b\)\(1\)\(ii\)](#) makes exceptions to HIPAA for Child Protective Services (CPS) investigations. "A covered entity may disclose protected 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."

The Victim Counselor Privilege

Criminal procedures in [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 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 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 investigation.

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

[IC 12-23-12-1: Notification or consent of parents or guardians; treatment in absence of notification](#), states that 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, guardian, or person having control or custody of the minor. DCS interprets this code, along with [42 USC Sec 290 dd-2](#), to mean that a minor can consent to the release of records that pertain to treatment for which he or she voluntarily consented.