

Tenn. Code Ann. § 71-1-131

Copy Citation

Current through the 2018 Regular Session.

- Tennessee Code Annotated
- Title 71 Welfare
- Chapter 1 Administration
- Part 1 Department of Human Services

71-1-131. Confidentiality of records.

(a) (1) (A) The records of the department, its contractors or agents concerning the provision of Title IV-D child or spousal support services shall be confidential and information in such records shall not be subject to public inspection by any person or entity and the records shall not be used in judicial, administrative or legislative proceedings or for law enforcement activities, except as otherwise provided in this section.

(B) Any information provided to the department, its contractors or agents by any other state or federal agencies or other entities, that is required by federal or state law or regulations to be provided to the department as part of the department's Title IV-D responsibilities to establish, enforce or modify child or spousal support, but which information is otherwise protected as confidential by the laws or regulations of the United States or by any state's, territory's or other government's law or regulations, shall also be confidential, and shall be held by the department in a confidential manner. Such information shall also not be subject to public inspection by any person or entity and shall not be used in judicial, administrative or legislative proceedings or for law enforcement activities, except as otherwise provided in this section.

(C) Except as limited by subdivision (a)(2), the department, its contractors or agents may disclose any information in the records of the Title IV-D child or spousal support records for purposes directly connected with the establishment of paternity or the establishment, modification, or enforcement of child or spousal support in any judicial or administrative proceeding or for the administration of any part of the child support program.

(2) Except where information in the child or spousal support record provided to the department pursuant to any federal or state law or regulation for purposes related to the establishment, enforcement or modification of child or spousal support under the Title IV-D child support program is otherwise specifically protected from further disclosure or further use by any other federal, state, territorial or other government law or regulation, the department is specifically authorized to further

utilize or further disclose any information from the Title IV-D child or spousal support records for any purposes that it determines in its sole discretion are directly connected with:

- (A) The administration of the plan or program approved under Parts A, B, D, or E of Title IV of the Social Security Act or under Titles I, XIV, XIX, or XX of the Social Security Act, or the supplemental security income program (SSI) established under Title XVI of the Social Security Act;
- (B) Any investigations, prosecutions, or civil, criminal or administrative proceeding conducted in connection with the administration of any such plan or program under subdivision (a)(2)(A);
- (C) The administration of any other federal or federally assisted program that provides assistance, in cash or in kind, or services, directly to individuals on the basis of need;
- (D) Reporting to an appropriate agency or official, information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child who is the subject of a child enforcement activity under circumstances that indicate that the child's health or welfare is threatened by such treatment;
- (E) A response to a request for child support payment records of a child support obligor; and
- (F) Inquiries from legislative representatives of an obligor or obligee concerning child support payment records or child support legal and administrative procedures utilized to attempt recovery of support payments involved in individual cases under a support order upon a release for that person authorized in any suitable manner as determined by the department or its contractors by the affected person. An inquiry and release by one party under this subdivision (a)(2)(F) does not authorize release of information involving the other party other than the child support payment record and child support legal or administrative procedures utilized to attempt recovery of support payments from the other party. Nothing in this subdivision (a)(2)(F) shall be construed to authorize release of any information that is otherwise protected as confidential pursuant to this section.

(3) (A) Notwithstanding the foregoing provisions of this section and any other law to the contrary, no information shall be disclosed by the department pursuant to this section from Title IV-D records maintained by the department, its contractors or agents when:

- (i) A protective order has been entered against one party and the release of information from such record would disclose the whereabouts of the party or the child for whose benefit the protective order was entered; or
- (ii) The department, its contractors or agents have reason to believe that the release of information concerning the whereabouts of one party or the child to another person may result in physical or emotional harm to the party or the child.

(B) In situations in which the prohibitions of subdivisions (a)(3)(A)(i) and (ii) arise, the department shall notify the secretary of health and human services if it determines that there exists reasonable

evidence of domestic violence or child abuse against a party or the child and that the disclosure of such information could be harmful to the party or the child.

(C) When a disclosure of information is made from the United States department of health and human services' federal parent locator service (FPLS) to a court of this state or an agent of the court of this state, and the court is notified that FPLS has reasonable evidence to show that domestic violence or child abuse has occurred, the court shall determine whether disclosure to any other person of information received from FPLS could be harmful to the parent or child and, if the court determines that disclosure to any other person could be harmful, the court and its agents shall not make such disclosure.

(4) Notwithstanding any law to the contrary, when any information regarding a consumer report, as defined in 15 U.S.C. § 1681a, from a consumer reporting agency is obtained by the department, its contractors or agents, such information will be kept confidential and will be used solely for the purposes of establishing an individual's capacity to make child or spousal support payments or in determining the appropriate level of such payments, and such report shall be confidential and will not be available by subpoena or court order for any civil, criminal, or administrative proceeding, law enforcement activity or for any other purpose, except for the purpose of the establishment, enforcement and modification of child or spousal support obligations by the department, or by any federal, state, territorial, or foreign child or spousal support enforcement agency, or by their contractors or agents.

(5) Notwithstanding any law to the contrary, any financial information obtained from a financial institution by the department, its contractors or agents regarding an individual shall be confidential and will not be available by subpoena or court order for any civil, criminal or administrative proceeding, law enforcement activity or for any other purpose, and shall be disclosed only for the purpose of and to the extent necessary for the establishment, enforcement and modification of child or spousal support obligations by the department, its contractors or agents or by any federal, state, territorial, or foreign child support enforcement agency or their contractors or agents.

(6) Notwithstanding any law to the contrary, any information that is required to be given to the department of human services, its contractors or agents by any requirement of federal or state law or regulations as part of the department's responsibilities to enforce child or spousal support, but that is otherwise not subject to subdivisions (a)(4) and (a)(5), and that is otherwise ordinarily protected by federal or state law or regulations from disclosure or use because it is protected as confidential information, shall be confidential and shall not be available by subpoena or court order for any civil, criminal, administrative proceeding, law enforcement activity, or for any other purpose. Such information shall be disclosed only to the extent permitted by such federal or state laws or

regulations, or only for the purpose of and to the extent necessary for the establishment, enforcement and modification of child support obligations by the department, its contractors or agents or by any federal, state, territorial, or foreign child support enforcement agency or their contractors or agents.

(7) (A) (i) Except as released pursuant to subdivision (a)(2) by the department, its contractors or agents, and except as prohibited by subdivisions (a)(3) -- (a)(6), the records or portions of records or testimony of current or former employees, agents or contractors of the department concerning the Title IV-D child support program may be released only pursuant to a written order for their disclosure issued by a judicial or administrative tribunal and served personally upon the commissioner of human services or the commissioner's designee at least five (5) business days prior to the date designated for disclosure. A subpoena shall not be sufficient to obtain the disclosure of Title IV-D child support records. Unless waived by the department, any order for disclosure not properly served shall be void and of no effect whatsoever.

(ii) Except as necessary for use in a judicial proceeding or an administrative proceeding concerning a Title IV-D child or spousal support matter in which such records must be disclosed, and for any appeal from the proceeding, any records of the Title IV-D child support program that may be ordered disclosed pursuant to this subdivision (a)(7)(A) for use in any other civil or criminal judicial or other administrative proceeding must also have a written protective order issued by the court or administrative law judge or hearing officer and served upon the commissioner of human services prior to the release of the records pursuant to this subdivision (a)(7)(A). The protective order shall state that there will be no further disclosure beyond the necessary use by the tribunal and the parties for the conduct of those proceedings. The department shall not be required to disclose any records until the receipt of the protective order by the department or its designee.

(B) The department may comply with a properly served order issued by a state or local judicial or administrative tribunal pursuant to this subdivision (a)(7) by sending copies of pertinent portions of the record requested, or by sending an abstract of the pertinent information from its computer records or other records, in a sealed envelope addressed to the court or administrative body or the person taking a deposition, together with an affidavit of an authorized agent of the department attesting to the authenticity of the record, unless the court or administrative body, for good cause shown, enters an order in the record requiring the attendance of a department, contractor or agent employee at the proceeding.

(C) The department, its contractors or agents may file a motion to quash or modify any subpoena or order for disclosure issued by any judicial or administrative tribunal or by any legislative entity, and no records shall be disclosed pursuant to any subpoena or order until the conclusion, including appeal, of the proceedings seeking to quash or modify the subpoena or order.

(8) A knowing violation of the provisions restricting the disclosure of information pursuant to this section shall be a Class B misdemeanor.

(b) Notwithstanding any other provisions of this section, information that is required to be provided to the department of human services, its contractors or agents by the department of labor and workforce development shall not be further disclosed or utilized except to the extent permitted and for the purposes allowable pursuant to § 50-7-701 or under applicable federal or state law or regulations.

Statute of limitations or CFR, TCA for retention of Family Assistance eligibility documents

CFR > Title 7 > Subtitle B > Chapter II > Subchapter C > Part 272 > Section 272.1

7 CFR 272.1 - General terms and conditions.

(e) Records and reports. Each State agency shall keep such records and submit such reports and other information as required by FNS.

(f) Retention of records. Each State agency shall retain all Program records in an orderly fashion for audit and review purposes for no less than 3 years from the month of origin of each record. In addition:

(1) The State agency shall retain fiscal records and accountable documents for 3 years from the date of fiscal or administrative closure. Fiscal closure means that obligations for or against the Federal government have been liquidated. Administrative closure means that the State agency has determined and documented that no further action to liquidate the obligation is appropriate. Fiscal records and accountable documents include, but are not limited to, claims and documentation of lost benefits.

(2) Case records relating to intentional Program violation disqualifications and related notices to the household shall be retained indefinitely until the State agency obtains reliable information that the record subject has died or until FNS advises via the disqualified recipient database system edit report that all records associated with a particular individual, including the disqualified recipient database record, may be permanently removed from the database because of the individual's 80th birthday.

(3) Disqualification records submitted to the disqualified recipient database must be purged by the State agency that submitted them when the supporting documents are no longer accurate, relevant, or complete. The State agency shall follow a prescribed records management program to meet this requirement. Information about this program shall be available for FNS review.

CFR > Title 7 > Subtitle B > Chapter II > Subchapter C > Part 274 > Section 274.5

7 CFR 274.5 - Record retention and forms security.

(a) Availability of records. (1) The State agency shall maintain issuance, inventory, reconciliation, and other accountability records for a period of three years as specified in § 272.1(f) of this chapter. This period may be extended at the written request of FNS.

(2) In lieu of the records themselves, easily retrievable microfilm, microfiche, or computer tapes which contain the required information may be maintained.

(b) Control of issuance documents. The State agency shall control all issuance documents which establish household eligibility while the documents are transferred and processed within the State agency. The State agency shall use numbers, batching, inventory control logs, or similar controls from the point of initial receipt through the issuance and reconciliation process.

(c) Accountable documents. (1) EBT cards shall be considered accountable documents. The State agency shall provide the following minimum security and control procedures for these documents:

(i) Secure storage;

(ii) Access limited to authorized personnel;

(iii) Bulk inventory control records;

(iv) Subsequent control records maintained through the point of issuance or use; and

(v) Periodic review and validation of inventory controls and records by parties not otherwise involved in maintaining control records.

(2) For notices of change which initiate, update or terminate the master issuance file, the State agency shall, at a minimum, provide secure storage and shall limit access to authorized personnel.

CFR › Title 45 › Subtitle A › Subchapter A › Part 92 › Subpart C › Section 92.42

45 CFR 92.42 - Retention and access requirements for records.

(a) Applicability.

(1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 92.36(i)(10).

(b) Length of retention period.

(1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

**USDA Eligibility Manual for School Meals
Child Nutrition Programs, FNS
Determining and Verifying Eligibility**

RECORD RETENTION

All free and reduced price applications, including applications from households denied benefits and inactive applications, must be kept on file for a minimum of three (3) years after the final claim is submitted for the fiscal year to which they pertain. Files must be kept longer if they are required by an audit until resolution of the issues raised by the audit.

Special provision schools must retain base year direct certification data and applications for a minimum of 3 years after a new base year is established.

Applications may be maintained either at the school or at a central location with a list of eligible children maintained at the school. If an LEA maintains applications at a central location, applications must be readily retrievable by school, and the LEA must ensure that any changes in eligibility status and transfers in and out of the school are accurately and promptly recorded on each school's list.

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-01-13
CASE RECORD MANAGEMENT**

TABLE OF CONTENTS

1240-01-13-.01	Case Record Management	1240-01-13-.03	Reserved for Future Use
1240-01-13-.02	Other Requests for Information		

1240-01-13-.01 CASE RECORD MANAGEMENT.

- (1) Reserved for Future Use
- (2) Reserved for Future Use.
- (3) Reserved for Future Use.
- (4) Reserved for Future Use.
- (5) Confidentiality Of Case Records.
 - (a) The Department of Human Services in Tennessee, in accordance with the laws of this State and the Federal statutes pertaining to this subject, has adopted the policy of maintaining the confidential nature of Family Assistance information. This same policy applies to all case records, whether Family Assistance or otherwise.
 - (b) Information Considered Confidential In general, the information listed below will be considered as confidential:
 1. Case records.
 2. Lists of Family Assistance recipients
 3. Reports of investigations and medical investigations.
 4. Names and addresses of Family Assistance recipients.
 5. All other information known to the agency in connection with Family Assistance and other services.
 6. Information contained on applications and on various forms.
 - (c) Exceptions to 1240-01-13- 01(5)(b) above
 1. Release to law enforcement officials to assist in prosecuting fraud against the Department or of child abuse
 2. Release to appropriate agencies assisting in collection of child support in the AFDC program.
 3. Release to service providers, such as mental health professionals, providing services to abusive or neglectful parents.

(Rule 1240-01-13-.01, continued)

4. Release to Employment Security for work registration requirements or WIN.
5. Release to the child's guardian ad litem in child custody and guardianship cases.
6. Disbursement report. AFDC only.
7. Total expenditure of funds.
8. Number of recipients and other statistical information.
9. Social data continued in general studies.
10. Reports on surveys.

(d) Release of Information to the Applicant/Recipient or His/Her Representative.

1. Food Stamp Records. Information in Food Stamp records will be made available upon written request to a responsible member of the Food Stamp household, the household's currently authorized representative, or a person acting on the household's behalf during normal business hours. If the person seeking to inspect the record is not a member of the household, the currently authorized representative, or a licensed attorney representing the household, written authorization from the household for the person to act on its behalf is required. However, the county office may withhold confidential information such as the names of individuals who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal prosecutions.
2. AFDC Records. The applicant/recipient shall have adequate opportunity at any reasonable time to examine, copy, and make notes about the contents of the case file about his/her circumstances maintained by DHS. The applicant/recipient may be accompanied and assisted by another individual, including a non-lawyer, to review the file with him/her. When the applicant/recipient has secured the service of an attorney, the attorney and that attorney's authorized non-lawyer employee shall have access at any reasonable time and upon written request to examine, copy, and make notes about the contents of the A/R's case file. The attorney must provide a written request which:
 - (i) includes the attorney's confirmation that the A/R has retained him/her as counsel;
 - (ii) provides assurance that the confidential nature of the information will be preserved;
 - (iii) provides assurance that the information will be used only for the purpose for which it is made available.

The individual granted access to the case record can only be the applicant/recipient, an individual accompanying and assisting the A/R in the A/R's presence, the A/R's attorney, or that attorney's non-lawyer employee whom the attorney supervises. Identification of the individual requesting access will be verified, unless she/he is known to the worker or other staff in the office.

(Rule 1240-01-13-.01, continued)

3. Merged Records - AFDC/FS. When individuals who are permitted access to the Food Stamp case, but not the AFDC case record, request access to the merged record, information regarding the AFDC program will be temporarily removed from the case folder.
 4. Protection of Case Material - AFDC/FS. A staff member will remain with an applicant/recipient, a claimant, or his/her representative who is reviewing a case folder document or is copying material from the folder to ensure that no material is removed from and subsequently not returned to the folder and to ensure that the original document (not the copy) is replaced in the folder.
 5. Access to Sensitive Data - AFDC/FS. While an applicant/recipient or his/her representative cannot be denied access to any portion of the case folder, at times there is information in the folder which could be damaging to the person. This is particularly true of medical/psychiatric/psychological reports. Also, some material is labeled "Confidential" by the provider. When such circumstances exist and the person is represented by an attorney, the attorney will be asked to consider the advisability of him/her having access to the documents but withholding them from the applicant/recipient. However, this decision must be made by the attorney/client and not by DHS staff.
 6. Interpretation of Case Material - AFDC/FS. Staff will make no effort to interpret or explain forms, documents, or other information contained in a case folder being reviewed by an applicant/recipient or his/her representative.
 7. Making Copies of Information in Case Record - AFDC/FS. Applicant/recipient or their representatives are to be permitted to make copies of any pertinent information which they are allowed to see. Upon an appellant's/his/her representative(s) request, one copy of portions of the case file relevant to the fair hearing/fraud hearing shall be furnished free of charge. When copying equipment is available, copies of other case file material may be furnished to an A/R, or an appellant, or an applicant/recipient's/appellant's representative at a charge of 10 cents per page (e.g., a charge of 20 cents would be made if the front and back of one page were copied). Under no circumstances will an applicant/recipient or his/her representative be permitted to remove a case folder from the county office. Neither will a staff member be furnished to take a folder from the office for the purpose of making copies of file material.
- (e) Release of Information to Persons Other Than the Recipient or Someone Acting on His/Her Behalf. Except as specified below, no information from case records in the possession of this Department is to be released to anyone outside this Department other than the Applicant/Recipient or his/her representative. The exceptions to this policy:
1. Food Stamps Only. Use or disclosure of information obtained from Food Stamp applicant households exclusively for the Food Stamp Program is restricted to the following persons:
 - (i) Persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, other federal assistance programs, or federally assisted state programs which provide assistance on a means-tested basis to low income individuals;
 - (ii) Employees of the Comptroller General's office of the United States for audit examination authorized by any other provision of law; and

(Rule 1240-01-13-.01, continued)

- (iii) Local, state, or federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulations. The written request must include the identity of the individual requesting the information, his authority to do so, the violation being investigated, and the identity of the person on whom the information is sought.
 - (iv) Local, state, or federal law enforcement officials may receive the address, Social Security Number, and (if available) photograph of a Food Stamp recipient if the officer furnishes the recipient's name and notifies the Department that the individual:
 - (I) is fleeing to avoid prosecution, custody, or confinement for a felony; or
 - (II) is violation a condition of parole or probation; or
 - (III) has information necessary for the officer to conduct an official duty related to items (I) and (II); and
 - I. locating or apprehending the household member must be an official duty of the officer making the request; and
 - II. the request is being made in the proper exercise of an official duty.
2. AFDC Only - Sharing of Information with Other Agencies. In the administration of the Family Assistance program and in connection with the individual case situations, information may be given as operates to the welfare of the individual, if the disclosure of such information does not operate to his/her embarrassment or possible exploitation. Information may be shared in these situations, when the following safeguards are observed:
- (i) The inquiring agency or individual has given assurance that the confidential nature of the information will be preserved.
 - (ii) The agency or individual has given assurance that the information will be used only for the purposes for which it is made available, such purposes being reasonably related to the purposes of the Family Assistance Program, and the function of the inquiring party
 - (iii) The standards of protection established by the agency or individual are equal to those established by the Department.
3. Release to Law Enforcement Officials - AFDC Only. Information may be released to appropriate law enforcement officials as may be needed by them in the apprehension and/or conviction of felons. This exception does not authorize release of information to assist process servers or others needing it for civil reasons.
4. Release Pursuant To Valid Subpoena Or Court Order - Food Stamps/AFDC. The Department will comply with a valid subpoena or court order for the release of information. If the subpoena would allow unrestricted access to the records, however, the court will be asked to limit the scope of discovery

(Rule 1240-01-13-.01, continued)

5. Disbursement Records Available To The Public In County Offices - AFDC Only.
 - (i) Disbursement records shall be placed in a binder provided for this purpose in a convenient place in the office so they will be available to the public.
 - (I) A copy of House Bill No. 322 (March, 1953) shall be pasted on the inside of the front cover of the binder.
 - (II) A register for the signatures of individuals who inspect the disbursement records shall be maintained as a permanent record. The date of inspection shall be included on the register.
 - (ii) It is unlawful for an individual to copy disbursement records. If such an attempt is made, the staff present shall call the individual's attention to the law. If the individual should persist in his/her effort, a law enforcement officer shall be called and asked to stop the illegal act.
 - (iii) Reserved for future use.

Authority: TCA §§14-1-105(12); 14-8-106; 14-8-119, and 14-27-104(2); 7 CFR 272.1 (as amended 49 Federal Register 48680) and 45 CFR 205.50. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Amendment filed August 23, 1983; effective September 22, 1983. Amendment filed April 30, 1985; effective May 30, 1985. Amendment filed March 10, 1986; effective June 14, 1986. Amendment filed April 3, 1997; effective June 18, 1997.

1240-01-13-.02 OTHER REQUESTS FOR INFORMATION. All other requests for information received by the Department or any of its divisions should be referred through channels to the Director of Family Assistance.

- (1) Reserved for future use.
- (2) Reserved for future use.
- (3) Applications by Department Employees and Their Relatives. To avoid conflict of interest and insure privacy, special handling is given to Tennessee Department of Human Services employees and their relatives who apply for and receive Family Assistance benefits.
 - (a) The County Director or Regional Director, as appropriate, must be made aware of applications, recertifications, or case reviews for Family Assistance from an employee of the Department or from an employee's mother, father, grandparents, brother, sister, aunt, uncle, child, or member of the employee's household. Such actions are to be processed by a first-line Supervisor or other person designated by the County Director or Regional Director as appropriate.
 - (b) Each county shall develop a plan for limited access to these case records by other staff members and the employee himself/herself.

Authority: TCA §14-8-119; 45 CFR 205.50. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980.

1240-01-13-.03 RESERVED FOR FUTURE USE.

Authority: TCA §14-8-119; 45 CFR 205.50. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980.