

ACF

Administration
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and Families

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration for Children, Youth and Families**

1. Log No: ACYF-IM-NCCAN-96-01

2. Issuance Date: 1/24/96

3. Originating Office: National Center on Child Abuse and Neglect

4. Key Words: Confidentiality

INFORMATION MEMORANDUM

TO: The State Office, Agency, or Organization Designated by the Governor to Apply for a State Child Abuse and Neglect Grant

SUBJECT: State Eligibility in Meeting the Confidentiality Requirements in Section 107(b)(4) of the Child Abuse Prevention and Treatment Act

LEGAL AND RELATED REFERENCES: Section 107(b)(4) of the Child Abuse Prevention and Treatment Act and the Notice of Proposed Rulemaking, dated May 18, 1994

PURPOSE: The purpose of this Information Memorandum is to clarify the Department's position on State flexibility to implement the 1992 confidentiality amendment at Section 107(b)(4) of the Child Abuse Prevention and Treatment Act (CAPTA).

BACKGROUND: Public Law 102-586, Section 9, amended CAPTA by changing Federal child abuse and neglect confidentiality requirements. This revised legislation emphasizes the need for States to maintain the confidentiality of child abuse and neglect information, while at the same time providing for disclosure of information to persons and entities with a need for the information directly related to the purposes of CAPTA. The impetus behind this legislation was Congress' finding that an undue burden was being placed on the State process for investigating child abuse and neglect under the existing Federal mandate (House Education and Labor Committee Report 102-756, dated July 29, 1992).

In that same report, the Congress also noted that a comprehensive and coordinated approach is needed by States to adequately provide protection for abused and neglected children.

Accordingly, while confidentiality of records is important, communication among persons and entities working on investigation, prosecution and service provision should not be obstructed.

As a result of this legislation, a Notice of Proposed Rulemaking was published in the Federal Register on May 18, 1994 with a comment period that ended on July 18, 1994. However, after publication of the NPRM, it became clear that not only was CAPTA up for reauthorization, but

that the new Congress had considerable interest in major changes in the law. As a result, in an effort not to narrow State flexibility and add specific requirements at a time when it appeared that CAPTA would be modified substantially, if reauthorized at all, a decision was made to defer the issuance of final confidentiality regulations.

INFORMATION: The absence of revised regulations is not a barrier to States that choose to broaden their confidentiality statutes in accordance with the 1992 CAPTA amendment. In the absence of revised regulations which implement the 1992 amendment, States have broad authority to exercise flexibility in deciding how much disclosure, and under what circumstances, will best meet CAPTA's purposes in promoting child protection, consistent with the statute.

Since the 1992 amendment, several States have broadened their statutes to meet the needs within their States for the protection of children. Some of the States that have made such amendments include Arizona, Virginia and New Mexico. Because the 1992 CAPTA amendment gives States great latitude to decide what balance of confidentiality and disclosure will promote child protection, in the absence of revised regulations, the Department will interpret the confidentiality provisions broadly.

Accordingly, Federal funds will not be jeopardized so long as amendments to State confidentiality provisions are reasonably within the language of the statute on its face.

INQUIRIES TO: Regional Administrators

Region I - X
Olivia A. Golden
Commissioner