

102.00 Confidentiality Policy

(December 1997)

See corresponding procedure: 102.00P Confidentiality Procedure

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Description

ACCES-VR's acquisition of personal information about applicants or eligible individuals carries with it the obligation to fully inform applicants or eligible individuals about what information is gathered and how it will be used, to use the information confidentiality and to safeguard against unnecessary or inappropriate dissemination. Personal information is all material which is identifiable to an individual, including reports, evaluations, case histories, notes, photographs and directory information. ACCES-VR's obligation to preserve confidentiality pertains to its own use of information directly, and the release of personal information to third parties, other individuals and agencies. Release of personal information may also involve the individual's access to his or her own personal information and records.

Policy

1. ACCES-VR will obtain only information necessary to determine eligibility or to provide services to an individual. Needed information may already exist and be available from the individual and his or her family members, treating physicians, other agencies, or it may be information acquired by ACCES-VR specifically for the purpose of serving the individual (e.g., assessment). To the greatest extent possible, existing information will be used.
2. ACCES-VR will use information only for the person's participation in the vocational rehabilitation program, and will safeguard and preserve the confidentiality of all personal information it possesses, including the way information is used within ACCES-VR. Only persons with a need to know personally identifiable information should be allowed access to the materials. Information may be shared with other programs and agencies with the individual's informed, written consent if the information is necessary for the program. If ACCES-VR has received information from another source with restrictions or conditions for any further dissemination, ACCES-VR will release the information only under the conditions established by the other agency or organization.

3. Information may also be released for approved audit, evaluation and research for purposes directly connected with vocational rehabilitation or for purposes which would significantly improve the quality of life of applicants and eligible individuals. The recipient must assure the information will be kept confidential and will be used only for the purpose indicated. The final product may not reveal any personally identifying information without the affected individual's informed written consent.
4. An individual may have full, timely access to any information that ACCES-VR maintains about him or her, unless the counselor determines that some information may be harmful to the individual or if ACCES-VR obtained the information from a source which has restricted its dissemination to the consumer. Information that may be harmful will be released to anyone the individual designates as his or her representative. If ACCES-VR received information from a source that restricted its further dissemination, ACCES-VR will advise the individual to contact that source directly to obtain the information.
5. Exceptions
Personal information shall be released without the individual's consent, as required by law in the following circumstances: subpoenas and court orders signed by a judge; in connection with investigations concerning law enforcement, fraud or abuse; and to protect the individual or others if the individual poses a threat to his or her own safety, or another person's safety.

Notice to the Individual

1. At the time of the initial interview, and as appropriate through the rehabilitation process, the counselor must inform an individual of ACCES-VR's policies on acquiring, using and protecting information of a personal nature. Such notice must be given in a language or method of communication understandable to the individual. The explanation must include at least general information about the principal purposes for which ACCES-VR intends to acquire, use or release the information and must identify those agencies and circumstances under which ACCES-VR expects to share the information. The individual must give full and informed consent in writing to release any information. The individual will also be informed that they can withdraw their consent for release of information by notifying ACCES-VR in writing.
2. If an individual indicates that information in his or her file is misleading or inaccurate, ACCES-VR will carefully consider the individual's reasons for so concluding. Obvious errors should be corrected, but information regarded by the counselor as accurate and necessary should be retained. If the information is not amended, the record of services must document that the individual did request such an amendment and the individual will be informed of the availability of the hearing process.
3. If an individual refuses to grant permission for ACCES-VR to release information or obtain needed information from another agency or source, the reasons for the refusal should be discussed and the potential consequences should be explained to the individual. If the refusal results in ACCES-VR being unable to share or obtain needed information, ACCES-VR might be unable to proceed with the case.

Special Provisions

1. There are other legal requirements in Federal and State law regulating access to information which impact upon the vocational rehabilitation system, particularly with regard to notice and form of consent which primarily affect other government programs or particular groups of people. ACCES-VR must observe these and staff should strive to remain informed of the specifics of these requirements. For example:
 - A. HIV - Article 27-F of New York's Public Health Law imposes very stringent restrictions concerning the testing and safeguarding of HIV-related information and imposes severe penalties for any violation. ACCES-VR staff must be aware and scrupulously observe these requirements.
 - B. Schools and other similar educational institutions are governed by the Family Educational Rights and Privacy Act, referred to as FERPA or the Buckley Amendment. FERPA provisions directly apply to schools when there are requests for information from schools. FERPA's general confidentiality requirements are similar to the requirements governing the vocational rehabilitation program resulting from the Rehabilitation Act and implementing regulations.
 - C. Alcohol and Drug Abuse - Federal law (Public Health Service Act, 42 USC 290ee-3 and 42 USC 290dd-3) prescribes the requirements which must be met before disclosing information which identify, diagnose or describe treatment of a person who abuses alcohol and/or drugs and are maintained in connection with drug abuse prevention. These laws, too, provide substantial sanctions for violations.
 - D. The Mental Health Law covering mental illness contains numerous requirements for preserving confidentiality and limiting release of information without the individual's consent.

Reference:

Rehabilitation Act:

- Sections 2(a); 7(22)A and B; 101(a)(9); 102(a)3

Federal Statutes:

- Public Health Service Act, 42 USC Sections 290ee-3 and 290dd-3; The Family Educational Rights and Privacy Act, 20USC Section 1232g

Federal Regulations:

- 34 CFR Part 99 and Section 361.38; 42 CFR Part 2

State Statutes:

- Education Law Section 1007; Public Health Law, Article 27-F; Mental Hygiene Law Section 19.17, 23.05 and 33.13

State Regulations:

- 8 NYCRR 247.4

Questions & Answers:

- Confidentiality Questions & Answers