

Texas WIC Health and Human Services Commission

Effective July 1, 2021

Policy No. GA:01.0

Confidentiality of Applicant/Participant Information

Purpose

To ensure compliance with Federal Regulations and to protect the right to privacy of WIC applicants/participants.

Authority

7 CFR Part 246.26

Policy

All applicant/participant information must be kept confidential.

Definitions

Applicant/participant information – any information about a participant or applicant, whether obtained from the applicant or participant, another source, or generated as a result of WIC application, certification, or participation, that individually identifies an applicant or participant and/or a family member(s). Applicant or participant information is confidential, regardless of the original source and exclusive of previously applicable confidentiality provided in accordance with other Federal, State or local law. If there is a conflict between state policy and federal regulations, then federal regulations govern.

Guardian – an individual legally appointed and responsible to look after the affairs of a minor.

Managing Conservator - that court-appointed person with whom a child resides, or the state child protection agency, who selects the home or domicile of the child and who has the responsibility for the normal day to day care of the child; the custodian of the child or that person having custody of the child.

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Non-WIC Purpose – a purpose of a request by a third party for information about an applicant or participant that is not related to the direct administration or enforcement of the WIC Program. This includes a request for applicant or participant information by a parent/guardian/managing conservator of an applicant or participant who is engaged in a custody dispute; or, a request for applicant or participant information by a law enforcement agency or attorney for any purpose other than one of the specific purposes set forth elsewhere in this Policy.

Parent – an individual’s mother or father; can include an adoptive parent.

Release Form – a document signed by the applicant/participant authorizing the disclosure of confidential information and specifying the parties to which the information may be disclosed.

WIC Purpose – a purpose directly related to the administration and/or enforcement of the WIC Program.

Procedures

- I. Each local agency (LA) is responsible for restricting the use and disclosure of information obtained from program applicants or participants.
 - A. Routine access to WIC applicant/participant information must be limited to WIC staff, managers, and administrators who are responsible for the ongoing conduct of program operations. This provision excludes operational personnel not certifying and serving WIC applicants/participants and administrators who do not directly supervise WIC staff.
 - B. At all other times, applicant/participant information must be kept confidential.
 1. WIC staff may discuss applicant/participant information with other WIC staff as appropriate. Discussion must take place in private areas where the information cannot be overheard by

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- other participants, staff from other programs, or the general public.
2. WIC staff must ensure that a professional attitude is maintained at all times about applicant/participant information. This includes respecting the applicant/participant's privacy and maintaining respect for the dignity of the applicant/participant at all times.
- II. An applicant/participant or the parent/guardian/managing conservator of an infant or child applicant/participant has the right to access all information they have provided the WIC Program, such as income statements and participant-signed documents. The LA must provide a copy of the applicant/participant record to the applicant/participant or the parent/guardian/managing conservator of an applicant/participant free of charge.
- A. Any other information or record in the file that was not provided by the applicant/participant or the parent/guardian/managing conservator of an infant or child applicant/participant need not be provided. This includes, but is not limited to:
 1. Documentation of income provided by third parties.
 2. Staff assessments of participant's behavior or condition, unless required by Federal, State, or local law or policy; or unless the information supports a State, or LA decision being appealed in relation to a participant fair hearing.
 - B. The LA may determine what may be released, if anything, beyond the information provided by the applicant/participant.
- III. Disclosing information for WIC purposes to persons or entities other than the applicant/participant or the parent/guardian/managing conservator of an infant or child applicant/participant is restricted to certain entities/person as follows:

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- A. Those persons directly connected with the administration and/or enforcement of the Program, including other WIC state or local agencies as may be necessary to provide uninterrupted continuation of services when transferring participant records; WIC officials at the federal level, internal or independent auditors contracted by the LA, investigators from the Texas Office of Inspector General, and the Comptroller General of the United States.
 - 1. A release form signed by the WIC applicant/participant or parent/guardian/managing conservator is not necessary to provide applicant/participant information in these situations.
 - 2. Do not assume that requests from the above entities are always for a WIC purpose. For example, if an auditor is auditing a program other than WIC, then WIC information must not be provided.

- B. A third-party such as a physician, healthcare provider, service provider, attorney, or entity contracting with the SA or LA to provide WIC services (for example, the LA contractor that provides text messaging services).
 - 1. A signed release form from the applicant/participant or the parent/guardian/managing conservator is required in these situations.
 - 2. The SA or LA must inform applicants and participants that signing a release form(s) is not a condition of eligibility, and refusing to sign the release form(s) will not affect the applicant's or participant's eligibility or participation in the Program.
 - 3. Release forms authorizing disclosure to private physicians or other healthcare providers may be included as part of the application/certification process.

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4. All other request for applicant/participants to sign release forms must occur after the application/certification process is complete.
- IV. Disclosure of information for a non-WIC purpose is restricted to that which is necessary:
- A. To comply with the State laws on child abuse/neglect reporting in accordance with Chapter 261 of the Texas Family Code.
 - B. To respond to the request of a Department of Family and Protective Services (DFPS) caseworker who provides written proof that the State is the Managing Conservator of the participant.
 1. The caseworker is entitled to the information provided by the applicant/participant on behalf of the child.
 2. Other information not provided by the applicant/participant on behalf of the child need not be disclosed.

Example 1:

A DFPS caseworker calls the clinic and asks staff for information regarding a child participant and that information was provided by the applicant/participant on behalf of the child. Once the clinic has received documentation stating the State is the Managing Conservator of the child, staff must release the information as described in Procedure IV.B.

Example 2:

A DFPS caseworker calls the clinic and asks staff for information regarding a child participant but the State is not the Managing Conservator of the child. Staff must not release the information.

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- C. To comply with a criminal investigation where identification of a WIC client by WIC staff is needed. The person may not be identified as being or not being a WIC applicant or participant; his/her identity may be divulged if the WIC staffer has seen documentation of the person's identity.

Example:

A WIC staff person's purse is stolen from the clinic. A video tape of a person using the WIC staff person's credit card is obtained by the police and shown to the WIC staff person. The staffer can state "I saw this person in the clinic on this day and time and she showed me an ID that said her name was Mary Smith." Do not reveal whether or not the person is/was a WIC applicant or participant.

- D. To respond to a request from a third party, such as a service organization or a law enforcement agency, if the third party provides sufficient prior written consent to such release that it has obtained from the applicant/participant or the parent/guardian/managing conservator of the applicant/participant (for example, a law enforcement investigation).
- V. **Subpoenas:** If a LA receives a subpoena for confidential participant information, the following procedures must be followed.
- A. Upon receipt of a subpoena, the LA must immediately notify the SA by contacting the Information and Response Management (IRM) staff at 877-341-4491 (option 6 followed by option 4). The SA must acknowledge receipt of the subpoena within one business day. The SA's legal contact information will be given to the LA at that time.
- B. The LA must send a copy of the subpoena to the SA legal contact via secure email or fax.
- C. If required through parent agency policy, the LA may provide a courtesy copy of the subpoena to the parent agency legal contact.

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The LA must inform the parent agency that the SA is acting on the subpoena.

- D. The SA must determine whether the information requested is in fact confidential and prohibited from release as stated in the subpoena.
- E. If the SA determines the information is confidential and therefore prohibited from disclosure as stated in the subpoena, the SA will attempt to quash the subpoena unless the SA determines that disclosing the confidential information is in the best interests of the WIC Program. Such a determination should be made infrequently.

VI. **Search Warrants:** In responding to search warrants, the LA must comply with the following procedures:

- A. Upon receipt of a search warrant, immediately notify the SA by contacting the IRM staff at 877-341-4491 (option 6 followed by option 4).
- B. Immediately notify legal counsel for the parent agency and comply with their protocol concerning search warrants, if any.
- C. Comply with the search warrant; and
- D. Inform the individuals serving the search warrant that the information being requested is confidential and only provide the information being requested in the search warrant and no other information.
- E. Limit public access to the information being disclosed.

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<h3 style="margin: 0;">Quick Guide to Release of Client Information to Persons <u>Other Than</u> the Applicant/Participant or Parent/Guardian/Managing Conservator</h3>

IF the request for client information is for:	Then	And	Release information?
A WIC Purpose			
Agency staff and auditors auditing the WIC Program (see Procedure III.A)	Notice to client not required	Consent of client not required	Yes
Third party such as a physician, healthcare provider, service provider, attorney, or contractor (see Procedure III.B)	Notice to client required	Consent of client required	Yes – with client consent No – if client does not consent
A non-WIC Purpose			
Reporting child abuse/neglect as required by Chapter 261 of the Texas Family Code (see Procedure IV.A)	Notice to client not required	Consent of client not required	Yes
To respond to a request from a DFPS/Child Protective Services <i>with written proof</i> that the State is the Managing Conservator of the infant/child. (see Procedure IV.B)	Notice to client not required	Consent of client not required	Yes
To respond to a request from DFPS/Child Protective Services when the State is not the Managing Conservator and the infant/child is in the legal custody of the parent/guardian. (See Procedure IV.B)	Notice to client required	Consent of client required	Yes – with client consent No – if client does not consent (<i>Requestor may issue a subpoena to the LA to request records without client consent</i>)
To respond to law enforcement for reasons other than child abuse/neglect reporting.	Notice to client required	Consent of client required	Yes – with client consent No – if client does not consent

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IF the request for client information is for:	Then	And	Release information?
A non-WIC purpose			
To comply with a criminal investigation where identification of a WIC client is needed. (See Procedure IV.C)			No – WIC client status may not be provided. Yes - only the person's identity (i.e., name) may be provided, if known.
Other third parties including service organizations (See Procedure IV.D)	Consent of client required	Notice to client required	Yes – with client consent No – if client does not consent
A subpoena for client information (See Procedure V)			No – Contact IRM staff immediately
A search warrant for client information (See Procedure VI)			Yes - Follow Procedure VI.A-E before releasing