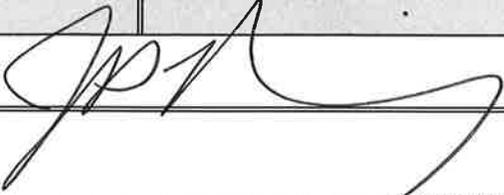


<b>POLICY # 205</b>	<b>SUBJECT: Confidentiality of Client Information</b>
<b>EFFECTIVE DATE: April 4, 1989</b>	<b>PAGE 1 of 11</b>
<b>REVISION DATE: February 27, 1996</b>	
<b>REVISION DATE: March 1, 2011</b>	
<b>REVISION DATE: March 1, 2020</b>	
<b>AUTHORIZED SIGNATURE:</b> 	

**DELAWARE CHILDREN'S DEPARTMENT**

**I. PURPOSE**

The purpose of this policy is to ensure that the management of confidential client information by the Department of Services for Children, Youth and Their Families (herein referred to as the "Department") is consistent with applicable statutes, regulations, and professional practice. This policy establishes guidelines to support appropriate collection, maintenance, use, and disclosure of confidential client information by employees, contracted providers, volunteers and trainees.

**II. POLICY**

The Department has an ethical, professional and legal obligation to protect individuals served from undue intrusion of privacy. Recorded and/or unrecorded information received from clients, or regarding clients and families, must be safeguarded. Except in limited circumstances outlined below, department employees, contracted providers, volunteers and trainees shall not release or knowingly permit the disclosure of any confidential information, by any means of communication, to any external person or agency/organization except with written informed consent of the legally authorized individual. The release or request for confidential information shall be limited to that which is necessary for case planning and service delivery.

The Department is committed to ensuring that children and families are actively involved in decisions regarding the use of their confidential information (including protected health information). Children and families served shall be informed of the Department's confidentiality policy and their rights. Consent for release of confidential information must be given voluntarily. Consent may be revoked at any time. Revocation does not invalidate actions that have already been taken based on the prior voluntary consent. There are some circumstances in which the release of information, even with consent, is strictly regulated.

**III. DEFINITIONS**

- A. Confidential Information: Any item, collection or grouping of information which could lead to the identification of an individual (e.g. name, identifying number like birth date or social security number, diagnosis of a health condition, etc.).
- B. Consent to Obtain or Release Confidential Information: Process where permission is received from the legally authorized individual to obtain and/or release their confidential information.

- C. Contracted provider: Agency, person or program providing services on behalf of the Department.
- D. Court Appointed Special Advocate (CASA): Individual appointed through Family Court to serve as guardian ad litem and represent the best interest of a child in foster care. A CASA has the legal authority to obtain confidential information.
- E. Disclosure: Release, transfer, or other communication of confidential information by any means, including oral, written, or electronic, to any party except to whom provided or created the record.
- F. Educational Surrogate Parent: Individual appointed to represent a student who receives, or may be in need of, special education. An educational surrogate parent may make educational decisions pertaining to the identification, evaluation, and educational placement of the student and the provision of a free, appropriate public education and give consent for release of educational records.
- G. Guardian: An individual who has been granted guardianship by a court. A guardian holds some or all of the rights of a parent and may give consent to the release of or request for information.
- H. Guardian Ad Litem (GAL): An individual appointed by the Family Court to represent the best interests of a child in child welfare proceedings by making recommendations to the Court. Typically, a GAL is either an attorney through the Office of the Child Advocate or a CASA.
- I. Health Insurance Portability and Accountability Act (HIPAA)<sup>1</sup>: National regulations for the use and disclosure of Protected Health Information (PHI) in healthcare treatment, payment and operations by covered entities.
- J. Information Security Officer: The person responsible for ensuring the security and safety of information system hardware and software. (Ref: DSCYF Policy 108 Computer Asset Management).
- K. Informed Consent: A process of obtaining permission from an individual to receive or send their confidential information. Informed consent ensures that the individual understands the details of what information will be shared with whom and for what purpose and is permission that is given freely without any form of coercion.
- L. Legally Authorized Person: The individual who has legal authority to consent to obtaining or releasing confidential information. The legally authorized person is determined by the type of confidential information (e.g. substance use, mental health, other) requested or disclosed.
- M. Minor: An individual who has not yet reached his or her eighteenth birthday.
- N. Office of the Child Advocate (OCA): The state agency charged with safeguarding the welfare of Delaware's children through educational advocacy, system reform, public awareness, training, and legal representation of children as set forth in 29 Del. C., Ch. 90A.
- O. Parent: A biological or adoptive parent or caregiver whose parental rights have not been terminated. Either parent may consent to the release or obtaining of confidential information unless otherwise specified by court order.
- P. Privacy Officer: Person designated to develop, implement, and oversee the organization's compliance with the U.S. Health Insurance Portability and Accountability Act (HIPAA) privacy rules.

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<sup>1</sup> Pub. L. 104-191.

- Q. Records: Client information that is maintained by DSCYF and contains confidential information. The records include information that is originated by the Department and/or its contracted providers and obtained from other sources.

#### **IV. SHARING CLIENT INFORMATION AMONG DEPARTMENT EMPLOYEES**

- A. Confidential information may be shared among department employees without obtaining a consent to release information from the legally authorized person when:
1. Employees across multiple divisions are actively working with the same child/family,
  2. Sharing of information is necessary to facilitate coordination of care across divisions,
  3. Sharing of information is necessary to enable employees with oversight or support roles (e.g. fiscal, cost recovery, interdivisional review groups) to fulfill their job responsibilities.

#### **V. EXTERNAL SHARING OF CONFIDENTIAL INFORMATION WITH INFORMED CONSENT**

- A. Unless outlined in Section VIII, employees will obtain the consent of the legally authorized person prior to releasing confidential information to or requesting confidential information from external parties including other agencies and contracted providers.
1. Employees shall provide the legally authorized person (when required) with information about the following prior to completing the consent form:
    - a. What specific information will be shared (released/obtained),
    - b. With whom the information will be shared,
    - c. Purpose for the sharing of the information,
    - d. The timeframe covered by the consent, and
    - e. Their right to rescind the consent and the process to rescind their consent.
  2. Employees shall obtain consent for the sharing of confidential information as follows:
    - a. After explaining the details of the request to release/obtain information, employees will obtain the written consent of the parent/guardian or child using the Department Consent to Release/Obtain Information Form (see Appendix C). The consent form must be completed fully prior to obtaining the signature of the parent/guardian or child.
    - b. Generally, the parent/guardian will be the individual who provides consent. However, the release of alcohol and/or drug information requires a consent form signed by a child if they are age fourteen (14) or older. For children under fourteen years of age, the consent must be signed by a parent or legal guardian.<sup>2</sup>
  3. If the parent/guardian and/or child are not able to provide written consent, the employee may obtain oral consent for the release of the information using the Department Consent

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<sup>2</sup> 42 CFR Part 2

to Release/Obtain Information Form. The form must be signed by two Department employees who witness the oral consent.<sup>3</sup>

4. If the only information to be released is educational records, an educational surrogate parent may sign the Department Consent to Release/Obtain Information form in lieu of the parental consent.
5. Each Division shall store signed release forms in accordance with Division policy or procedure.
6. There are special rules governing the release of information related to sexually transmitted disease (STDs), HIV and pregnancy.
  - a. Information that a person has been tested for HIV (or the result of a HIV test), may not be disclosed to anyone without a release signed by the person tested, if 12 or older or the parent/legal guardian.<sup>4</sup> Disclosure of HIV information without written consent is permitted in the following limited situations:
    - i. Emergency medical care and to health care workers under specified circumstances
    - ii. Child abuse/neglect investigation
    - iii. Activities related to the control of sexually transmitted diseases (STDs)
  - b. Information about the medical examination, consultation, or the treatment of a minor twelve years or older for sexually transmitted diseases (STDs), or for pregnancy-related conditions may not be released without the written consent of the minor.<sup>5</sup> Parental consent cannot be substituted for the consent of the minor in these areas. Disclosure of pregnancy or STD information without consent is permitted in the following limited situations:
    - i. Activities related to control and treatment of STDs
    - ii. Public health reporting as required by law
    - iii. Child abuse/neglect investigations

## VI. EXTERNAL SHARING OF INFORMATION WITHOUT INFORMED CONSENT

- A. For children in the custody of the Department, if it is not possible to obtain the consent of the parent/guardian and the release of the information is necessary to obtain or coordinate care for the child, the division employees may sign the consent.
  1. **Employees should attempt to notify the parent/guardian that consent to disclose information was signed by the employee with the details of the consent (what information was released/obtained and to whom information was released/obtained).**
- B. State statutes require that relevant information be shared without consent in the following situations:
  1. Reports or investigations of suspected child abuse or neglect, suspected impaired adult abuse, neglect or exploitation.<sup>6</sup>

<sup>3</sup> 42 CFR Part 2

<sup>4</sup> 16 Del. C § 1201 - 1232

<sup>5</sup> 16 Del. C § 710; 711; 712

<sup>6</sup> 16 Del. C § 903; 906; 909

2. Information necessary for the placement of a child in care.<sup>7</sup>
  3. Medical emergencies.<sup>8</sup>
  4. Imminent threat or danger of an individual to themselves or by an individual to protect others.<sup>9</sup>
- C. Attorneys and Court Appointed Special Advocate volunteers (CASA) through the Office of the Child Advocate (OCA) may access confidential information without the consent of the legally authorized person.
1. DSCYF employees shall obtain a copy of the order of appointment prior to releasing confidential information and shall notify their supervisor of the request to disclose confidential information prior to its release.
  2. The child's attorney or CASA shall provide a signed consent to release information from the parent/guardian for the release of their own mental health or substance use and the release of their child's mental health or substance use record, for children under age 14. Children aged 14 or older must sign the consent to release their substance use information. The child's attorney or CASA may receive mental health and substance use information by providing a valid court order.
  3. Upon receipt of a copy of the order (and consent/court order for mental health and substance use information), the child's attorney or CASA will be provided access to inspect the record and will be provided with a copy any part of the record at their request.
- D. Confidential information also may be provided without consent to the following parties or for the following purposes:
1. The Family Court for the review and monitoring of decisions regarding the mixing of delinquent and non-delinquent youth in residential settings.<sup>10</sup>
  2. The Interstate Compact Office of the applicable jurisdiction for monitoring of interstate cases.<sup>11</sup>
  3. The Department of Health and Social Services on a limited need to know basis as specified in the Department's enabling legislation.<sup>12</sup> This includes exchange of information with Medicaid for cost recovery purposes, child support enforcement, purchase of care, to establish eligibility for services and to apply for benefits that a child/family may be eligible to receive.
  4. The Department of Education for reporting academic progress for those children educated by DSCYF Education Unit Employees, children served as a part of the K-5 program, as well as to meet other state and federal statutory requirements related to educational performance of children in the custody and care of the Department.<sup>13</sup>
  5. To another school for the purpose of coordinating educational planning for children for whom DFS has custody.

<sup>7</sup> 13 Del. C. 25 § 2521(1) and 29 Del. C. 9017(b)

<sup>8</sup> 13 Del. C. 25 § 2521 (2)

<sup>9</sup> 16 Del. C. 54 § 5402

<sup>10</sup> 10 Del. C. 9 § 1009(j)(3)a

<sup>11</sup> 31 Del. C. 3 § 381(b) and (c) , 31 Del. C. §5203 Article I

<sup>12</sup> 29 Del. C. § 9017(d). Confidential Information

<sup>13</sup> Educational Regulations (State) 14 DE Admin Code Section 251

6. For administrative audits, program evaluations, or research where no confidential information is disclosed or only aggregate data are used.
7. To comply with a subpoena or other valid court order. Employees should follow their division procedures for responding to subpoena or court order.

## **VII. WHEN EXTERNAL DISCLOSURE OF CONFIDENTIAL INFORMATION IS NOT PERMITTED**

- A. The following confidential information may not be disclosed unless required by statute, requested by subpoena or valid court order, or for criminal or civil law enforcement:
  1. Information that would violate the confidentiality rights of others, reveal a source protected by guarantee of confidentiality, or release of records sealed by the court (for example, termination of parental rights or adoptions). Seek supervisory consultation prior to any release of information.
  2. Information compiled in reasonable anticipation of a court action or for enforcement of criminal laws shall not be released except as directed by the Attorney General's Office.

## **VIII. DEPARTMENT/DIVISION RESPONSIBILITIES**

- A. **The Department ensures that employees have been informed of their responsibilities regarding the management of confidential information.**
  1. All new employees will review this Confidentiality of Client Information Policy upon hire and will sign an acknowledgement that they understand their responsibilities under the policy.
  2. All employees are required to review this policy and sign an acknowledgement that they understand their responsibilities as outlined in this policy annually.
  3. The Department will provide annual continuing education to employees related to the Confidentiality of Client Information Policy.
  4. Division management will provide guidance to employees regarding this policy and its application.
- B. The DEPARTMENT Cabinet Secretary shall appoint a Privacy Officer consistent with HIPAA requirements. The privacy officer shall collaborate with the DSCYF Information Security Officer to ensure alignment between security and privacy compliance.
- C. Divisions shall develop procedures for handling client information that are specific to their own operations (for example, division procedures for record storage and security, for the content of records, and for maintaining records of information disclosure).

**IX. EMPLOYEE RESPONSIBILITIES**

- A. Department employees are responsible for:
1. Being knowledgeable of the contents and complying with the Confidentiality of Client Information policy. Employees who fail to comply with this policy are subject to discipline up to and including termination.
  2. Maintaining the confidentiality of information which they encounter or to which they have access and for ensuring the appropriate management of information in planning and implementing client services.
  3. Informing clients of their rights regarding confidentiality including their right to consent to the release of information and to review information held in their department files (Appendix A). Employees will ensure that the consent to obtain or release form is completely filled out before requesting the signature of the legally authorized person.
  4. Seeking consent to obtain or release information that is necessary to fulfill their job responsibilities.
  5. Obtaining or accessing information that is necessary to fulfill their job responsibilities and is within the scope of their employment.
  6. Protecting the confidentiality of records associated with the transmission of confidential client information. (see Acceptable Use and Computer Asset Management policies and guidelines) This shall include protecting the identification of clients and families within e-mail and other electronic transmission of data. Options to protect the person's information include the use of PID number, initials or encryption.
- B. Falsifying client records (11 Del. C. § 871) and dissemination of criminal history record information in violation of the State Bureau of Identification's statute (11 Del. C. § 8513) are against the law and any instances will be referred to law enforcement for investigation.
- C. All Department employees shall sign the Acknowledgement Statement contained in this Department Confidentiality Policy (Appendix A). Failure to sign the Acknowledgment Statement shall not eliminate or diminish a user's obligation to comply with the policy.

**X. RESPONSIBILITY FOR THIS POLICY**

The Department Privacy Officer is responsible for providing guidance regarding this policy.

**APPENDIX A: CONFIDENTIALITY NOTICE TO CLIENTS**

We want you to know why we collect information about you and your family, the steps we take to protect your privacy, and your rights to know what we keep in our records.

**Why do we keep records?**

- Delaware law authorizes the Department to collect and keep information to carry out our duties. This information is used for planning and providing services to you and your family.

**Will this information be kept confidential?**

- All Department employees sign a Non-Disclosure and Confidentiality Agreement that describes their duty to protect the privacy of client information.

**Who else may learn this information?**

- Division Case Managers / Service Teams working with you and employees with oversight or administrative duties are permitted to see information about you and your family.
- When you receive services from organizations with contracts with the Department, information will be shared with the provider's case managers.
- Except in certain situations, such as alleged child abuse or neglect, emergencies threatening to health and safety, establishment of service eligibility or recovery of the costs of services, compliance with court orders, your written consent or that of the child client is required for the Department to share information about you or your family with others.

**Where and how is information stored?**

- All written records are stored in secured files or storage areas when not in use.
- The Department has a computerized client information system on which data is stored. Electronic information is protected by established computer access and security procedures.

**What are your rights?**

- You have the right to find out what records we have about you or your family, to review these records (with certain exceptions), and to grant or revoke your permission for the Department to share this information with others outside DSCYF.
- If information in our files is erroneous or you disagree with file information, you may state your differences in writing, and we will include your statement in our records.
- You have the right to revoke the authorization for the release of information, in writing, to the DSCYF Privacy Officer (DSCYF\_ADA@delaware.gov), at any time prior to its expiration date. The revocation will not apply to information that has already been released in reliance on this authorization.

**Do you have other questions?**

- If you have other questions about what is or will be placed in our records about you or your family, please ask them of the Department person working with you.
- Upon request, we will provide you with a copy of our Confidentiality Policy.

**I have read the Confidentiality Notice to Clients (on the previous page) and I understand my confidentiality rights.**

\_\_\_\_\_  
**Child Signature**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Parent/Guardian Signature (circle one)**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Witness Signature**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Date**

**APPENDIX B: ACKNOWLEDGMENT STATEMENT  
DSCYF EMPLOYEE NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**

The undersigned acknowledges that the services the Department of Services for Children, Youth and Their Families (DSCYF) performs for its clients and all other parties involved are confidential. DSCYF and its clients depend upon department employees and others who have access to department information or are authorized to visit department areas, to keep all information about clients and services confidential. By reason of your duties at DSCYF, you may come into possession, or become aware of, information concerning clients and/or their families. This agreement applies to information acquired in any way to include without limitation:

- Events or actions involving direct contact with clients/families or others.
- Information learned by accessing an automated data system, client records to include documents and viewing, or causally observing, documents that may be displayed on computer screens or other electronic presentations.
- Information learned for training purposes.
- Information shared orally through consultation with persons providing services or unintentionally overhearing conversations in DSCYF areas.

By signing below you are indicating you understand and agree that:

- In compliance with department policy, you are required to participate in department training on confidentiality policies and procedures.
- You will only access, or seek access to, information in any form that is job-related and necessary for you to complete assignments given you by DSCYF supervisors or managers.
- You will not at any time, during or after your employment, duties or visitation at DSCYF, disclose any confidential information to any person except as permitted by statute, regulation, and/or as governed by policies of DSCYF or a written informed consent by the person(s) involved. Disclosure means the communication of information by any method including orally, by written document or through access to automated data systems.
- You will safeguard all client-related confidential information acquired orally or through automated or written documentation, so that no one is able to examine, acquire, or copy information unless authorized as indicated above.
- If you are an authorized user of any automated system containing confidential information, you will neither share your password or ID with anyone, nor will you keep a written record of your password or ID in an unsecured location where unauthorized individuals may access them.
- Employees are responsible for complying with all confidentiality policies in effect during their period of employment with DSCYF and / or during the period of their access to DSCYF information. All employees will be notified in writing or through training of revised or new confidentiality policies.

The penalty for unauthorized access, disclosure or misuse of confidential information will be based on progressive discipline guidelines in accordance with the Merit Rules. Criminal or civil prosecution may occur as applicable. If you have any questions regarding this document, please discuss fully with your supervisor before signing. This signed agreement will be retained in you DSCYF personnel file. A copy of this signed agreement will be provided for your own records.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX C (found on next page): DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION**

For a printable version of this form, please go to [extranet/useful forms](#).



**PART I: AUTHORIZATION FOR RELEASE OF INFORMATION**

**Client Information**

Name\*: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
 Name\*: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
 Name\*: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
 Name\*: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

*\*Person(s) for whom information will be released and/or received*

**Recipient Information**

I, \_\_\_\_\_, (please circle **one**: self/parent/guardian/custodian), **provide consent for an authorized representative of the Department of Services for Children, Youth, and Their Families (DSCYF) to:**  
[Please initial the appropriate line(s) and check the appropriate box(es)]

\_\_\_ **release client's Information to** the following individual or authorized organization representative:

\_\_\_ **receive client's Information from** the following individual or authorized organization representative:

- Parent/Guardian
- Substance Treatment Provider (please specify): \_\_\_\_\_
- School (please specify): \_\_\_\_\_
- Legal Counsel (Name): \_\_\_\_\_  
 (Contact Information): \_\_\_\_\_
- Other (please specify): \_\_\_\_\_
- Other (please specify): \_\_\_\_\_
- Other (please specify): \_\_\_\_\_

**The purpose of this exchange of information is to provide services or representation to the client or to present the client's case in court.**

**Description of Information to be Released**

**Information to be Released:** All information, including but not limited to: medical, educational, diagnoses and treatment (whether verbal, written, or electronic). Information regarding the following confidential matters will not be released to non-DSCYF representatives unless required by law or expressly indicated below: mental illness, acquired immune-deficiency syndrome (AIDS), or human immuno-deficiency virus (HIV), sexually transmitted diseases, tuberculosis, hepatitis C, or genetic information. *(Please use the space below to specify any additional information to be released or excluded):*

\_\_\_\_\_  
 \_\_\_\_\_

**Substance Use Disorder Information to be Released:** All information including, but not limited to: treatment assessments and progress, drug screens and discharge summaries (whether verbal, written or electronic). **Authorization for the disclosure of substance use disorder information requires a separate signature under Part II of this form.**

*(If applicable, please use the space below to specify additional substance use disorder information that may be disclosed or excluded):*

\_\_\_\_\_  
 \_\_\_\_\_

Please disclose the above described information to the above identified individual or authorized organization representative. I understand I may inspect or copy the information released and may request a list of the people information has been disclosed to, as provided in 45 CFR §164.524 and 42 CFR 2.13.

I also understand that reports and/or documents from third party providers not under contract with DSCYF or its divisions will not be released under this authorization and must be requested directly from such third party provider.

I have been made aware that even without this signed authorization, the Health Insurance Portability and Accountability Act ("HIPAA") allows sharing of protected health information, without client authorization, for the purpose of treatment, payment, and operations.

I understand that I can revoke this authorization for the release of the client's information, in writing, to the DSCYF Privacy Officer ([DSCYF\\_records\\_requests@delaware.gov](mailto:DSCYF_records_requests@delaware.gov)), at any time prior to its designated expiration. I understand that the revocation will not apply to information that has already been released in reliance on this authorization.

I understand that authorizing the disclosure of this information is voluntary. I can refuse to sign this authorization. I do not need to sign this release for the client to be provided mental health treatment. If the client is provided treatment by DPBHS, a separate authorization will be needed to determine whether the client qualifies for their services and benefits.

I further understand that once information is disclosed, there is a potential for an unauthorized re-disclosure, which will cause the federal confidentiality rules to no longer protect it. If I have any questions about the disclosure of the client's information, I can contact the DSCYF Privacy Officer.

**Expiration Date**

This release of information is valid for: <input type="checkbox"/> 365 days from the date of the signature below; or unless less than a year and specified below <input type="checkbox"/> (Please indicate duration of release) _____
---

_____ Self/Parent/Guardian/Custodian Signature	_____ Print Name	_____ Date
---	---------------------	---------------

**PART 2: ADDITIONAL AUTHORIZATION FOR DISCLOSURE OF SUBSTANCE USE DISORDER INFORMATION**

I understand that I can revoke this authorization for the release of the client's substance use disorder information, in writing or orally to the DSCYF Privacy Officer, at any time prior to its designated expiration. I understand that the revocation will not apply to information that has already been released in reliance on this authorization.

I understand that Federal rules restrict any use of substance use disorder information to criminally investigate or prosecute any alcohol or drug abuse patient. I understand that any information related to substance use disorder services or treatment is protected under the confidentiality provisions of 42 CFR Part 2 and cannot be further disclosed without written consent, unless expressly authorized in this authorization or otherwise permitted by 42 CFR Part 2. **I understand that the signature(s), immediately below, authorize(s) the release of client's substance use disorder records, as described with specificity in Part I of this release.**

_____ Self/Parent/Guardian/Custodian Signature	_____ Print Name	_____ Date
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_____ Minor Signature (If age 14 or older)	_____ Print Name	_____ Date
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The client shall receive a copy of this signed authorization.  
A copy of this authorization shall have the same force and effect as the original authorization.