Chapter 16
Confidentiality

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This chapter details the WIC confidentiality policy, circumstances when confidential information may be released, child abuse and neglect reporting, and responding to subpoenas and search warrants, and data sharing. WIC Programs are not subject to HIPAA regulations; however, local WIC programs may be housed in health agencies subject to HIPAA regulations. Consult with your local HIPAA compliance officer with any questions not covered in this chapter.

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Confidentiality of Applicant/Participant Information

Each local agency is responsible for assuring the confidentiality of applicant/participant information. Refer to 7 C.F.R. § 246.26 for the requirements governing the confidentiality of applicant and participant information. For guidance on confidentiality not covered in this chapter, contact your local agency HIPAA officer.

Confidential Applicant/Participant Information

Confidential applicant and participant information is any information about an applicant or participant, whether it is 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 family member(s). Applicant or participant information is confidential, regardless of the original source.

Permitted Uses and Disclosures of Confidential Information without Applicant/Participant Authorization

WIC Purposes

- **Ongoing administration or enforcement of the WIC Program.** The use and disclosure of confidential applicant/participant information is restricted to persons directly connected with the ongoing administration or enforcement of the WIC Program whom the State agency determines have a need to know the information for WIC Program purposes. These persons may include but are not limited to:
  - Personnel in the state's local WIC agencies;
  - Personnel in other WIC State or local agencies;
  - Persons under contract with the State agency to perform research regarding the WIC Program;
  - Persons investigating or prosecuting WIC Program violations under federal, state or local law;
  - Comptroller General of the United States; and
  - United States Department of Agriculture Food and Nutrition Services.

  Applicant or participant authorization is not required for sharing confidential applicant or participant information between state or local agencies for the prevention or detection of multiple WIC enrollments (dual participation) or for the transfer of participants between state or local agencies. However, the confidential information must be shared only with staff directly connected with the administration or enforcement of the WIC Program whom the agency determines has a need to know the information for WIC Program purposes.
- **Transfer of Certification.** The state and/or local agency may release information to WIC agencies for Verification of Certification (VOC) for the transfer of participants as described in Chapter 6E.
- **Dual Participation.** Local agencies may need to share certain applicant/participant information to prevent and detect dual participation (simultaneous participation in more than one WIC Program). The information may be shared between local agencies within North Carolina and with other state and local agencies. Again, staff must ensure that the confidential applicant/participant information is shared with person(s)

directly connected with the administration or enforcement of the WIC Program who have a need to know the information for WIC Program purposes. Refer to Chapter 6F: Certification and Participation: Program Abuse by Participants, Section 2: Dual Participation for additional information.

- **Non-WIC Purposes**
  The use and disclosure of confidential applicant or participant information by the WIC State Agency or its local agencies in the administration of its other programs that serve persons eligible for the WIC Program or to other public organizations for use in the administration of their programs that serve persons eligible for the WIC Program is prohibited, unless a written agreement meeting the requirements of 7 C.F.R. § 246.26(h) has been executed and approved by the Chief State Health Officer and identified in the WIC State Plan.

- **Child Abuse and Neglect Reporting**
  North Carolina law requires that any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, or has died as the result of maltreatment, report the case of that juvenile to the Director of the Department of Social Services (DSS) in the county where the juvenile resides or is found. Therefore, WIC staff may release confidential applicant and participant information without the applicant or participant's authorization. Refer to N.C.G.S. § 7B-301 related to how to release information about abuse, neglect, dependency, or death due to maltreatment.

  Initiating a report of suspected child abuse, neglect, dependency, or death due to maltreatment for the purpose of complying with North Carolina's child abuse reporting law, N.C.G.S. § 7B-301, is separate and distinct from disclosing confidential information in response to a request from DSS for information to substantiate a third party report of abuse, neglect, dependency, or death due to maltreatment. Our State law, N.C.G.S. § 7B-302, requires an agency or individual to provide DSS, upon request, access to confidential information *to the extent permitted by federal law and regulations*. The federal WIC confidentiality regulation does not expressly address the disclosure of confidential information in response to a request from DSS for information to substantiate a third party report. Therefore, it appears that the general federal prohibition against the use or disclosure of confidential information would apply to such disclosures and that a written authorization or a court order would be required to disclose confidential information to substantiate a third party report of abuse, neglect, dependency, or death due to maltreatment. Local agencies should always consult with their legal counsel when such requests are received and review each request on a case-by-case basis.

  WIC staff must document in the applicant/participant record the information reported to DSS and when and to whom the information was given.

- **Subpoenas and Search Warrants**
  Refer to Section 3 for information on responding to requests for confidential applicant and participant information through a subpoena or search warrant.

- **Release of Aggregate Information for Program Evaluation Studies**
  The confidentiality provision does not prohibit the Community Nutrition Services Section and local agencies from releasing non-identifying applicant/participant information in aggregate or summary form.

- **Applicant/Participant Requests Information**
  The State or local agency must provide applicants and participants access to all information they have provided to the WIC Program. In the case of an applicant/participant who is an infant or child, access may be provided to the parent or guardian of the infant or child, assuming that any issues regarding custody or guardianship have been settled. However, the State or local agency does not need to provide access to any other information in the file or record such as staff assessments of the applicant or participant's condition or behavior, unless required by Federal, State or Local law or unless the information supports a State or local agency decision being appealed. Refer to Chapter 14 for information on administrative appeals.

■ **Uses and Disclosures of Confidential Information Requiring Applicant/Participant Written Authorization**

- **Release of Information Form**
  For all other uses and disclosures, the state or local agency may disclose confidential applicant and participant information to individuals or entities only if the affected applicant or participant has signed a release form authorizing disclosure which specifies the information to be disclosed, the individual or entity to whom the information may be disclosed, a prohibition on re-disclosure of the information by the receiving individual or entity without further written authorization, and the duration of the authorized disclosure (e.g. expires on a specific date or upon a specific event or condition).

- **Third Party Requests for Confidential Applicant/Participant Information**
  The state or local agency must permit applicants and participants to refuse to sign a release form based upon a third party's request for confidential information and must notify the applicants and participants that signing the form is not a condition of eligibility and that refusing to sign the form will not affect the applicant or participant's application or participation in the WIC Program. Release forms authorizing disclosure to private physicians or other health care providers may be included as part of the WIC application or certification process. All other requests for applicants or participants to sign voluntary release forms must occur after the application and certification process is completed.

  Any release form should include the information described above under "Release of Information Form."

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Confidentiality of Vendor Information

The State agency must restrict the use or disclosure of confidential vendor information to:

- Persons directly connected with the administration or enforcement of the WIC Program or SNAP who the State agency determines have a need to know the information for purposes of these programs. These persons may include personnel from its local agencies and other WIC State and local agencies and persons investigating or prosecuting WIC or SNAP violations under Federal, State, or local law;

- Persons directly connected with the administration or enforcement of any Federal or State law or local law or ordinance. Prior to releasing the information to one of these parties (other than a Federal agency), the State agency must enter into a written agreement with the requesting party specifying that such information may not be used or re-disclosed except for purposes directly connected to the administration or enforcement of a Federal, or State law; and

- A vendor that is subject to an adverse action, including a claim, to the extent that the confidential information concerns the vendor subject to the adverse action and is related to the adverse action.

- At the discretion of the State agency, all authorized vendors and vendor applicants regarding vendor sanctions which have been imposed, identifying only the vendor's name, address, length of the disqualification or amount of the civil money penalty, and a summary of the reason(s) for such sanction provided in the notice of adverse action. Such information may be disclosed only following the exhaustion of all administrative and judicial review, in which the State Agency has prevailed, regarding the sanction imposed on the subject vendor or the time period for requesting such review has expired.

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Subpoenas and Search Warrants

Responding to Subpoenas

A subpoena is a written directive for information to be provided by an individual or entity. Generally, a subpoena directs the named individual or entity representative to appear at a designated time and place, often with certain records, and give information on a topic about which the individual or entity is knowledgeable. There are two basic types of subpoenas: a subpoena directing an individual or entity to attend and give testimony at a trial, hearing or deposition (a witness subpoena); and a subpoena to produce documents (a subpoena *duces tecum*), which directs the named individual or entity to appear and produce documents. Sometimes the two subpoenas are combined and the named individual or entity is asked to testify and to produce documents. Although a subpoena is issued and signed by a clerk of court, judge, magistrate or attorney, the subpoena is merely a request for information and is NOT a court's ruling that the information must be released. A subpoena requires a response and must not be ignored, but it does not require the immediate surrender of information.

Upon receipt of a subpoena, the local agency must use the following procedures:

- Immediately notify the Community Nutrition Services Section (CNSS) through your Regional Nutrition Consultant.

- Consult with legal counsel for the local agency and determine whether the information requested is in fact confidential and prohibited from being used or disclosed.

- If necessary, the local agency's legal counsel may consult with the State agency's legal counsel as to how to proceed. This communication should only be between legal counsel to legal counsel.

- If it is determined that the information is confidential and prohibited from being used or disclosed, the local agency's legal counsel will determine how to proceed based on the type of subpoena received. Such procedures may include contacting the subpoenaing party and convincing the party to withdraw the subpoena after explaining the confidential nature of the requested information, serving written objections to the subpoena, or moving to quash the subpoena.

- If a court orders the release of confidential information after being informed of the confidential nature of the requested information and of the federal regulatory prohibition against its use or disclosure, seek to limit the disclosure by:
  - Providing only the specific information requested in the subpoena and no other information; and
  - Limiting to the greatest extent possible public access to the confidential information disclosed.

- Maintain in the file a copy of the subpoena and any other documentation pertaining to the release of the confidential information, such as a court's order requiring release of the confidential information and any agreement or order limiting disclosure of the

information.

- **Responding to Search Warrants**
  A search warrant is a court order and process directing a law-enforcement officer to search designated premises, vehicles, or persons for seizing designated items and accounting for any items so obtained to the court which issued the warrant. A search warrant may be issued by a clerk of court, magistrate, or judge, and must be executed by the law-enforcement officer within 48 hours from the time of issuance. A warrant not executed within 48 hours is void. **A search warrant, unlike a subpoena, requires compliance at the time the search warrant is served by the law enforcement officer.**

  Upon receipt of a search warrant, the local agency must use the following procedures:

  - Immediately notify the local agency's legal counsel. If you are unable to contact your legal counsel prior to having to respond to the search warrant, contact your legal counsel as soon as possible after responding to the search warrant.

  - Immediately notify the Community Nutrition Services Section (CNSS) through your Regional Nutrition Consultant.

  - Carefully review the search warrant for the following: that the warrant has been signed by the clerk of court, magistrate or judge; that the warrant is being executed by the officer within 48 hours of issuance by the clerk, magistrate or judge [a warrant is void if not executed within 48 hours]; and the items/information being sought in the search warrant.

    Note: North Carolina law requires that before entering the premises, the officer executing a search warrant must give appropriate notice of his or her identity and purpose to the person in apparent control of the premises to be searched. Also, before undertaking any search or seizure pursuant to the warrant, the officer must read the warrant and give a copy of the warrant application and affidavit to the person in apparent control of the premises to be searched. The scope of the search may be only such as is authorized by the warrant and is reasonably necessary to discover the items specified in the warrant.

  - Comply with the search warrant, providing only the specific items/information described or designated in the search warrant. The officer must write and sign a receipt that lists the items taken and leave the receipt with the local agency.

  - Inform the officer(s) serving the search warrant that the information being sought is confidential and seek to limit the disclosure by:
    - Providing only the specific information requested in the search warrant and no other information; and
    - Limiting to the greatest extent possible public access to the confidential information disclosed.

Maintain in the file a copy of the search warrant application, affidavit(s), signed receipt for any seized items, and any other documentation pertaining to the search warrant.