

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2118

2005 SENATE HUMAN SERVICES

SB 2118

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2118

Senate Human Services Committee

☐ Conference Committee

Hearing Date January 5, 2005

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|------------|
| 1 | X | | 1,610-3441 |
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| Committee Clerk Signature <i>Cathy Minard</i> | | | |

Minutes:

All members were present.

Testimony in favor of bill.

Krista Andrews, attorney for the Department of Human Services.

See Attachment 1

Sen. Brown: Who are you disclosing social security number to?

Andrews: It would just be in the administration of the program. So it could be kind of hard to give some sort of summary since there are so many ways in which you could disclose a social security number; whether it be for billing purposes or obtain information from another provider. It allows us to release that information if we needed to. We do have a statement on our 'release of information' form which specifies that the receipt of services from the Department is not conditioned on them providing us with their social security number. It just helps us administer our program.

Sen. Brown: Is it disclosed to only those under the confidentiality agreement? There's a real issue across the country about the release of social security numbers, and these numbers are one of the ways people are using to get at a persons identity. Are we disclosing social security numbers to people that are covered under confidentiality rules? Are they going to maintain the confidentiality of that social security number.?

Andrews: I understand what you mean. Would we be able to only release the social security numbers to another entity or program that has similar confidentiality statues to ensure they remain confidential? Can I defer to Mr. Mullen, he's our HIPPA expert.

Mike Mullen, Department of Human Services: I believe the answer to that question is yes. A lot of the entities that the social security numbers are disclosed to are health care providers and use the social security number and the name to match up and make sure you have the right individual. Those health care providers are 99.9% covered by HIPPA and covered by the confidentiality agreement. Sometimes the information may go to a school or other organization that is coordinating benefits to a DHS recipient. But there is a provision in this statue, in the bill you are considering now, that if the Department of Human Services has a contract with somebody to assist in providing services or handling data they have to agree in a contract that they will agree to protect the confidentiality to the same extent that the Dept. of Human Services is required to protect confidentiality.

Sen. Brown: It seems strange to me that at a time when we're taking the social security number off driver's licenses that we're opening up a different avenue.

Mullen: I understand what you're saying, I believe that are some federal laws that require the use of social numbers for an applicant to receive benefits. And to the extent that the Dept. of Human Services is administering the federal program that are required to record all the information that is required under federal law. To the extent that there is discretion, then obviously the Department as Blue Cross Blue Shield recently did, can migrate away from using social security numbers and use some random ID numbers.

Sen. Brown: So all the work we did on HIPPA last session this is cracking the door open just a little bit.

Mullen: To some extent, but anyone who uses social security numbers or obtains this information, either names or social security numbers, is required under this bill and current law to maintain the confidentiality of that individuals name, i.e., if a health care provider or clinic is providing health care treatment to an individual under Medicaid, that clinic is required to maintain the confidentiality of that person's name and social security number.

Andrews: The Department does have many federal statues and laws that do require us to social security numbers in the administration of our program already. We wouldn't be changing the way we're practicing, just clarifying that there is a specific state law, because you have that open records amendment that said that if you have a specific state law, this way we don't have to go through and recite and the federal laws, it's just contained in the 50-06-15 and anyone we would contract with, it's pretty much going to cover everyone, that they wouldn't be able to re-release that information.

No opposing or neutral testimony.

Hearing was closed.

Date: 1/5/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2118

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Sen. Lyson Seconded By Sen. Brown

| Senators | Yes | No | Senators | Yes | No |
|---------------------------------|-----|----|------------------|-----|----|
| Sen. Judy Lee - Chairman | ✓ | | Sen. John Warner | ✓ | |
| Sen. Dick Dever - Vice Chairman | ✓ | | | | |
| Sen. Richard Brown | ✓ | | | | |
| Sen. Stanley Lyson | ✓ | | | | |
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Total (Yes) 5 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

wording change for clarification

Date: 1/5/05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2118

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Brown Seconded By Sen. Warner

| Senators | Yes | No | Senators | Yes | No |
|---------------------------------|-----|----|------------------|-----|----|
| Sen. Judy Lee - Chairman | ✓ | | Sen. John Warner | ✓ | |
| Sen. Dick Dever - Vice Chairman | ✓ | | | | |
| Sen. Richard Brown | ✓ | | | | |
| Sen. Stanley Lyson | ✓ | | | | |
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Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. Dever

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 5, 2005 4:03 p.m.

Module No: SR-02-0105
Carrier: Dever
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2118: Human Services Committee (Sen. J. Lee, Chairman) recommends DO PASS
(5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2118 was placed on the
Eleventh order on the calendar.

2005 HOUSE HUMAN SERVICES

SB 2118


2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2118

House Human Services Committee

☐ Conference Committee

Hearing Date February 9, 2005

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|---------|
| #1 | x | | #0-516 |
| | | | |
| | | | |
| Committee Clerk Signature  | | | |

Minutes:

Chairman Price opened hearing. Eleven members present. One absent.

Melissa Hauer, Attorney DHS.

See attached Testimony.

Vice Chrm.Kreidt: Why is the change from a Class C felony to a Class A misdemeanor.

Class A misdemeanor is a tough penalty.

M. Hauer: I am not exactly sure, I can clarify that if you would like.

Chairman Price: If you have a list that you provided on the Social Security issues, could you provide that to me, or would you rather just give me several examples on SS needs.

M. Hauler: Child Support program, we are required by Fed. law to use SS#'s of the obligor to make sure that we are getting the right person to pay the child support obligations.

Medicaid, we are required to get the SS#'s and to give that number to the federal government, we do data sharing, food stamps as well, we are required to get the number and also to release it to

the federal government. I do have a 10 page letter that I drafted for the AG's office during the interim that applies on how we use SS#'s on all of our programs, if anyone would like to furnish that for you.

Opposition:

Martin Wishnatsky, Fargo.

See attached tri-fold.

I'm not opposed to confidentiality statute but I believe as this is drafted that it overlooks a very important exemption which needs to be recognized, which I will call the whistle blower exemption. Because I have found that confidentiality can be misused to cover wrong doings by government actors. When an individual, being a journalist, member of the public or someone victimized by actions of the dept., wishes to seek regress in the dept. itself, is the cause of the injury and will not respond, that person is unable to address the issue without going outside the dept. and so now publicizing the situation. I would like to share this with the committee.

(Tri-fold) Obviously, government needs to be accountable and confidentiality was taken to their ultimate conclusion and actually hindered that. So I would recommend an amendment as to this case study of how a young man was lied to and dragged out to the State Hospital and was told he was going for a medical appt. at SE Human Services and when he got there, they seized him with a taser and took him out to the State Hospital and there is no reason for that at all. That is a power play on the part of Social Services. Abuses do occur, I believe that there should be an amendment.

David Habiger: I am also in opposition, but Mr. Wishnatsky said it very well and I agree with him 100%.

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House Human Services Committee
Bill/Resolution Number SB 2118
Hearing Date February 9, 2005

Chairman Price called for anymore opposition to HB 2118.

Hearing closed.

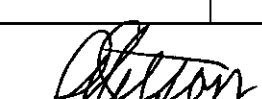
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2118

House Human Services Committee

☐ Conference Committee

Hearing Date February 15, 2005

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|----------|
| 2 | | x | 690-1100 |
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| Committee Clerk Signature  | | | |

Minutes:

Chairman Price opened the hearing on SB 2118.

Chairman Price: Rep. Kreidt, did you send this out to everyone, that you received from Melissa Hauer?

Rep. Kreidt: No, I didn't.

Chairman Price: As you requested this AM, I testified and supported HB 2118, I did some research as to why the judicial process committee is recommending that the penalty for wrongful disclosure confidential information be Class C Felony rather than some lesser penalty. I visited with Vonette Richter, Legislative Council Staff Attorney. She said approximately that 95% of the penalties of wrongful disclosure of information are a Class C Felony under current law. There were just a few laws like in 2118 that provided for a different penalty. They wanted those cleaned up and make them all consistent. They did have some discussion on whether or not there should be lesser penalties. They came to the conclusion that this action is necessary to make

Page 2
House Human Services Committee
Bill/Resolution Number SB 2118
Hearing Date February 15, 2005

people aware of the consequences. This is from Melissa Hauer. We did have a proposed amendment on this also, on page 2, line 21.

Rep. Porter: Do we have that printed out.

Chairman Price: It is with Melissa testimony. That would make it so that unauthorized disclosure of information or records is subject to penalty and not the release of information necessary to administer programs as described in this bill.

Rep. Porter: I move the amendment.

Rep. Devlin: Second

Voice Vote: Unanimous

Chairman Price: Did everyone have a chance to look this over? I will give you sometime to look this over. There is not anything else we can do today.

Hearing closed.


2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2118

House Human Services Committee

☐ Conference Committee

Hearing Date **February 28, 2005**

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|---------|
| 2 | | X | 3,472 |
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| Committee Clerk Signature  | | | |

Minutes:

Chairman Price opened the discussion.

Melissa Hauer: Gave an explanation of the bill. Stating it related to confidentiality issues relating to people they serve or who apply for services. It makes it a crime to release information if they don't have the proper authorization.

Rep. Weisz: Referred to Page 1, line 21, which stated that person can't relay this information either.

Melissa Hauer: She stated the language was not too clear. She stated, that wasn't the intent. Committee members discussed ways to clarify the language. Melissa Hauer was going to bring amendments to clarify the language.

The bill will be acted on at a later date.

Chairman Price closed the meeting.

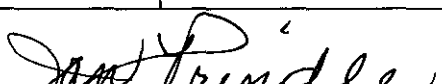
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2118

House Human Services Committee

☐ Conference Committee

Hearing Date **16 March 2005**

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|------------|
| 2 | x | | 1190 -1580 |
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| Committee Clerk Signature  | | | |

Minutes:

Chairman Price opened discussion of SB 2118. We have passed an amendment on page 2, line 15, back on February 15. I did get all the information from Melissa Hauer on when they can and can not do this and it is very strict. There is about 9 pages worth of stuff. The amendment was not meant to prevent any member of the public to bring out misuse by the department.

Rep. Weisz: Are the provisions of this bill also in 1036?

Chairman Price: 1036 is the judicial process. The change was on the penalties was to conform with what they've got in 1036 so that release of confidential information is all standard.

This is provides a definition of your identifiable information that they can identify you as an individual from that information A vendor, agent or contractor, must maintain the confidentiality.

Rep. Uglem: I move a Do Pass as amended.

Rep. Porter: I second.

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House Human Services Committee

Bill/Resolution Number **SB 2118**

Hearing Date **16 Mar 05**

Yes: 12 No: 0 Absent: 0

Representative Uglem will carry the bill.

Date: 3/16/05

Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. ~~HB~~ SB 2118

House Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do PA Amd

Motion Made By

Rep Uglem

Seconded By

Rep Porter

| Representatives | Yes | No | Representatives | Yes | No |
|--------------------|-----|----|-----------------|-----|----|
| Chairman C.S.Price | ✓ | | Rep.L. Kaldor | ✓ | |
| V Chrm.G. Kreidt | ✓ | | Rep.L. Potter | ✓ | |
| Rep. V. Pietsch | ✓ | | Rep.S. Sandvig | ✓ | |
| Rep.J.O. Nelson | ✓ | | | | |
| Rep.W.R. Devlin | ✓ | | | | |
| Rep.T. Porter | ✓ | | | | |
| Rep.G. Uglem | ✓ | | | | |
| Rep C. Damschen | ✓ | | | | |
| Rep.R. Weisz | | | | | |
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Total () 12 No 6

Absent 0

Floor Assignment Rep Uglem

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 17, 2005 4:01 p.m.

Module No: HR-49-5353
Carrier: Uglem
Insert LC: 58200.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2118: Human Services Committee (Rep. Price, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2118 was placed on the Sixth order on the calendar.

Page 2, line 15, after "any" insert "confidential", remove "described", and after the second "in" insert "violation of"

Renumber accordingly

2005 TESTIMONY

SB 2118

**TESTIMONY BEFORE THE SENATE HUMAN SERVICES COMMITTEE
REGARDING SENATE BILL 2118
JANUARY 5, 2005**

Chairman Lee, members of the Committee, I am Krista Andrews, an Attorney for the Department of Human Services. I am here today testifying in support of Senate Bill 2118.

Senate Bill 2118 would amend N.D.C.C. § 50-06-15 which provides for the confidentiality of information maintained by the Department of Human Services. The amendments are designed to more closely conform to the Health Insurance Portability and Accountability Act (HIPAA). Specifically, SB 2118 provides a definition of "individually identifiable information" based on a similar definition in the HIPAA privacy rule. SB 2118 also specifies how a vendor, agent or contractor must maintain the confidentiality of individually identifiable information.

Aside from the changes made to accommodate HIPAA, SB 2118 also accomplishes two other objectives: First, it changes the penalty for wrongful disclosure of information under the section from a class A misdemeanor to "the penalty provided in section 12.1-13-01", which is a class C felony. This change was made to conform to the changes proposed by HB 1036 which was introduced at the request of the Judicial Process Committee in order to standardize the penalty for release of confidential information. Since SB 2118 encompasses the changes being made in HB 1036, but contains additional changes specific to the Department of Human Services, I ask the committee to assist in assuring

that the provisions of this bill are incorporated into the provisions of section 8 of HB 1036.

Second, SB 2118 amends N.D.C.C. § 50-06-15 to clarify that the Department may disclose an individual's Social Security number in the administration of its programs. A change was made to the Open Records Law during the 2003 legislative session to provide that social security numbers are confidential but can be released pursuant to a specific state or federal law. This bill would clearly provide the Department with the ability to disclose individuals' Social Security numbers in the administration of its programs.

This concludes my testimony. I would be happy to try to answer any questions the committee members may have. Thank you.

**TESTIMONY BEFORE THE HOUSE HUMAN SERVICES COMMITTEE
REGARDING SENATE BILL 2118**

FEBRUARY 9, 2005

Chairman Price and members of the Committee, my name is Melissa Hauer. I am an Attorney for the Department of Human Services and I am here today to testify in support of Senate Bill 2118.

Senate Bill 2118 would amend N.D.C.C. § 50-06-15 which provides for the confidentiality of information maintained by the Department of Human Services. The amendments are designed to more closely conform to the Health Insurance Portability and Accountability Act (HIPAA). Specifically, this bill provides a definition of "individually identifiable information" based on a similar definition in the HIPAA privacy rule. Senate Bill 2118 also specifies how a vendor, agent or contractor must maintain the confidentiality of individually identifiable information.

Aside from the changes made to accommodate HIPAA, this bill also accomplishes two other objectives: First, it changes the penalty for wrongful disclosure of information under the section from a class A misdemeanor to "the penalty provided in section 12.1-13-01", which is a class C felony. This change was made to conform to the changes proposed by House Bill 1036 which was introduced at the request of the Judicial Process Committee in order to standardize the penalty for release of confidential information. Since Senate Bill 2118 encompasses the changes being made in House Bill 1036, but contains additional changes specific to the Department of Human Services, I ask the committee to assist in assuring that the provisions of this bill are incorporated into the provisions of section 8 of House Bill 1036.

7

Second, this bill would amend N.D.C.C. § 50-06-15 to clarify that the Department may disclose an individual's Social Security number in the administration of its programs. A change was made to the Open Records Law during the 2003 legislative session to provide that social security numbers are confidential but can be released pursuant to a specific state or federal law. This bill would clearly provide the Department with the ability to disclose individuals' Social Security numbers in the administration of its programs.

I would also like to offer the attached proposed amendment to the bill to clarify subsection four. The amendment would change that subsection to read: "Any person who discloses, authorizes, or knowingly permits, participates in, or acquiesces in the disclosure of any confidential information in violation of this section is subject to the penalty provided in section 12.1-13-01." This amendment would make it clear that only the unauthorized disclosure of confidential records is subject to penalty and not the release of information necessary to administer programs as described in this section.

This concludes my testimony. I would be happy to try to answer any questions the committee members may have. Thank you.

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2118

Page 2, line 15, after "any" insert "confidential", after information overstrike "described",
and after the second "in" insert "violation of"

Renumber accordingly

November 6, 2003

The Honorable Wayne Stenehjem
Attorney General of North Dakota
600 East Boulevard Avenue
Bismarck, ND 58505-0125

RE: Confidentiality of Social security numbers

Dear Attorney General Stenehjem:

On September 3, I received an e-mail message from Assistant Attorney General Mary Kae Kelsch requesting additional information about the Department's use of Social security numbers of the individuals served by the Department. The additional information was requested to respond to my inquiry of May 21 regarding 2003 House Bill No.1092 which makes social security numbers confidential. Please find the questions Ms. Kelsch sent (in bold) and our responses below. If possible, the Department would appreciate the opportunity to discuss the Attorney General's tentative conclusions prior to issuance of the opinion.

1. Please identify what third parties the Department regularly releases documents that may contain an individual's social security number.

To aid in understanding how the Department operates, the following is a list of the major program divisions: Aging Services, Child Support Enforcement, Children and Family Services, Children's Special Health Services, Disability Services, Economic Assistance Policy (Medicaid, food stamps, child care assistance, TANF, Aid to Aged, Blind, and Disabled, and Low Income Home Energy Assistance), Medical Services, Mental Health & Substance Abuse, Regional Human Service Centers, State Hospital, and the Developmental Center. The following are examples of the third parties to whom the Department regularly releases documents that may contain an individual's social security number. The list is not comprehensive, but it details a good number of the third parties that receive this information from the Department.

Economic Assistance Policy: insurers such as Blue Cross/Blue Shield of North Dakota, health care providers, the Social Security Administration, the Internal Revenue Service, Workforce Safety & Insurance, anyone with whom we have data exchanges, County Social Service Boards, federal agencies with oversight of the program, and law enforcement.

Child Support Enforcement: employers (for income withholding), other States, credit bureau reporting, agencies responsible for recording liens, licensing authorities,

The Honorable Wayne Stenehjem
November 6, 2003
re: Confidentiality of Social security numbers
p. 2

financial institutions, the federal government (for passport denials and federal tax intercepts), state lottery (for offset), regional child support enforcement units, and clerks of court.

Disability Services: to employers, schools, colleges, and medical facilities.

State Hospital: courts, other governmental agencies, attorneys, insurance companies, and other health care providers.

Children and Family Services: to state and federal agencies that supply background check information for child care and foster care licensing and adoption approval purposes, to agencies that provide mental health treatment to children receiving our services, and to private agencies such as Lutheran Social Services who provide services under contract with the Department.

Regional Human Service Centers: hospitals, other health care providers such as clinics, the Social Security Administration, the Department of Juvenile Services, courts, schools, insurance companies, and courts.

2. Are there instances where someone applies for benefits without filling out an application form?

The Department operates numerous programs some of which provide benefits (such as economic assistance benefits) and other programs which provide services to clients (such as the State Hospital or Regional Human Service Centers). To try to give an accurate explanation of how the Department uses Social security numbers, the answer to this question includes a description of application procedures for both benefit programs and service programs. The following are just some examples of when the Department may provide benefits or services even though the client has not completed an application.

Economic assistance programs. Large numbers of economic assistance program clients are children. Others are elders and individuals with disabilities who rely upon others to complete applications for them. Most economic assistance programs require benefits to be determined for an entire household but we typically receive an application completed by an individual member of that household. Other adult members of the household, as well as children who may be related to the individual completing the application/redetermination in ways other than parent/child, are described in the application/redetermination. We require the Social security number for all of these individuals, but we do not ordinarily receive any authorization to provide the Social security number to anyone.

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November 6, 2003
re: Confidentiality of Social security numbers
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Child Support. An application form is necessary either for the custodial parent and child to receive public assistance benefits (which creates an assignment of rights in favor of the State) or to obtain enforcement services when public assistance is not expended in a case.

Medical services (Medicaid): Individual children who access clinics sponsored by the Children Special Health Services complete a registration form. It technically is not an application form.

Aging Services. Vulnerable adult protective services do not require an application. The Department receives a report that an elderly or disabled individual is being abused, exploited, or neglected and the matter is investigated. Similarly, reports are made to the Ombudsman regarding complaints about treatment of a resident of a long-term care facility and so the duty to investigate is triggered even though no application is made. Home and Community Based Services (HCBS) do require the applicant to complete an application through a County Social Service Board.

Disability Services. DDS may review a continuing disability claim in which the individual who is receiving benefits has not cooperated with the review process. The Social Security field office will receive the claims file from the Baltimore office and make contact with the claimant to determine whether he or she still meets the disability criteria.

Regional Human Service Centers. Almost all clients sign an application for services. One exception would be when a client is delusional or paranoid and refuses to sign anything. Occasionally, a Center will also have a crisis walk-in client who does not go through the registration process and there are times when someone is admitted to a crisis residence over the weekend and he or she signs an application the following business day.

State Hospital and Developmental Center. Some of the patients being treated at the State Hospital are not there voluntarily and others are not capable of completing an application. Residents of the Developmental Center are also often not capable of completing an application.

3. Do the application forms vary depending on the program?

Yes. Federal and state eligibility or service requirements vary from program to program. In the absence of federal or state requirements, the programs vary from one another so applications will require different information depending on the services or benefits being given.

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November 6, 2003
re: Confidentiality of Social security numbers
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4. Do all the application forms ask for an applicant's social security number?

Not all application forms used by the Department ask for an applicant's social security number because it is not necessary in every program.

5. What does the Department do if an applicant refuses to provide their social security number?

Economic Assistance Policy. If the social security number is not provided, no benefit can be provided. There are exceptions for very young children (newborns) but loss of benefits occurs if a number is not promptly secured.

Child Support Enforcement. Enforcement activities against an obligor may be pursued without the social security number of the child or custodial parent. Eventually, however, the obligor's social security number is necessary to fully enforce child support obligations.

Aging Services. County Social Service Boards are required to collect the social security number for Home and Community Based Medicaid waiver eligibility and payment purposes. For Title III B and C benefits, all third party providers ask for an applicant's social security number. However, they do not deny service if an applicant refuses to give it.

Children and Family Services. If an applicant for a child care or foster care license refused to provide his or her social security number, the Department would either have to rely on the applicant's own certification that he or she never committed a crime against a child (without any way to verify that information with an independent source such as a background check) or deny the application.

Regional Human Service Centers. If a client refuses to provide a social security number, Centers will still provide services.

6. Is there a reason that language authorizing the release of the individual's social security number could not be added to the form?

In some programs, we cannot condition eligibility for benefits on the provision of a social security number. In Economic Assistance programs, we require social security numbers. We are neither required to, nor prohibited from, using social security numbers in some programs, but we choose to require social security numbers to achieve necessary payment accuracy. In other cases, as described above, many of the people we serve either will not or cannot complete an application for benefits or services. In a large number of Economic Assistance cases, the person making application has no

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November 6, 2003
re: Confidentiality of Social security numbers
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authority to authorize the release of another individual's social security number. In other cases, the applicant may have authority by custom (as in parents authorizing release of social security number, as well as other confidential information, about their children), but specific statutory authority may be missing.

7. Are there any situations where an authorization would not work?

Yes. As described above, in many circumstances we provide services or benefits when no application has been or will be submitted (for example, child abuse and neglect, vulnerable adult protective services, ombudsman services, State Hospital services, psychiatric services at Regional Human Service Centers).

8. Please identify what programs do not have federal authority to release social security numbers and where N.D.C.C. § 50-06-15 is the sole authority relied upon for such release.

The following programs or services provided by the Department do not have any governing federal laws or regulations that would specifically authorize the release of an applicant or recipient's social security number:

Aging Services: adult day care services, adult family foster care, case management, ombudsman services, vulnerable adult protective services, Older American Act services.

Children and Family Services: child abuse and neglect assessments, foster care, adoption, early childhood programs (child care), refugee resettlement.

Children's Special Health Services: pediatric specialty care, multidisciplinary clinic services, care coordination services.

Disability Services Division: Vocational Rehabilitation services, Developmental Disability services, Interagency Program for Assistive Technology.

Economic Assistance: TANF, childcare assistance, and Low Income Home Energy Assistance.

Medical Services: Children's Health Insurance Program, assisted living licensing.

Mental Health and Substance Abuse Services: licensing of residential treatment centers, licensing of alcohol and other drug treatment programs.

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November 6, 2003
re: Confidentiality of Social security numbers
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State Institutions (State Hospital and Developmental Center): intermediate care facility for the mentally retarded, inpatient psychiatric services, and chemical dependency treatment.

Regional Human Service Centers: case management, sexual abuse programs, residential therapeutic services, medication administration, outpatient psychiatric services, domestic violence counseling, and chemical dependency treatment.

The only programs administered by the Department that have federal authority to release social security numbers are Child Support Enforcement, Medicaid, and Food Stamps. See 42 U.S.C. 1320b-7.

9. Is the release of a social security number to a third party essential in every one of these programs?

Economic Assistance Policy. It depends. In some cases we could not secure verifications necessary to administer the program such as financial information to verify eligibility. In addition, we must provide the social security number to some federal agencies to allow comparisons with data reports that also use the social security number. This is done electronically. The electronically furnished social security number is the only information provided for some of this crosschecking activity and, therefore, it is essential.

Medical Services. Providers of service must have a way of billing for services. If we could not release the social security number of a recipient, we would have to develop a new process to provide eligibility information to insurers for which we have no funds and there would be many instances in which an individual could not be distinguished from another with the same name without the social security number.

Child Support Enforcement. The social security number of an obligor is essential. In addition to being federally required, it is vital to the automatic processes and data matches we perform that we have a common identification number that is unique to the obligor. Our error rate would increase exponentially if we were required to take enforcement actions based solely on name and address. It would not be possible to comply with the federal mandates for our program without releasing an obligor's social security number.

Disability Services. Disability Determination Services (DDS) contracts with the Social Security Administration (SSA) to determine disability of individuals who apply for various Social Security benefits. DDS is required to use the social security number of the applicant or recipient when communicating with the SSA about the claim for benefits.

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Children and Family Services. The social security number is essential because duplicate names do occur. For example, in the children's mental health Voluntary Treatment Program, the Department must verify that the child is covered by Medicaid. Without assurance that it is the correct person, searches may lead to false or no information and ultimately program access problems.

Regional Human Service Centers. Most if not all insurers require the insured's identifying number, which in many cases is the social security number by client choice.

10. What would happen if you could not release the client's social security number?

For Medicaid, Food Stamps, and Child Support Enforcement, the programs would be out of compliance with federal laws or regulations or both which require the release or use of the social security number to administer the program. In other economic assistance programs, the Department could not verify eligibility for benefits.

Children and Family Services. The Department could not perform background checks on childcare license, foster care license, and adoption applicants. Children receiving voluntary treatment program services could not be served if their Medicaid eligibility cannot be verified.

Aging Services. The Department could not perform background checks on adult family foster care license applicants and it could not verify which individuals are eligible for Medicaid Home and Community Based Services.

Disability Services. Typically it would make it difficult to help the provider determine where to credit a payment which could result in multiple invoices or payments or both to the same provider for the same service to the same person.

Regional Human Service Centers, State Hospital, and Developmental Center. The Department may not get paid when it billed insurers for services rendered and it may not be able to get copies of health care records from other providers if the client cannot be sufficiently identified from another person with the same name.

11. Are there any alternative ways that an applicant can be identified or income verified without the use of a social security number, for example, by using name and date of birth? If so, is the Department using any of these methods?

Economic Assistance. The Department also uses date of birth and name as identifiers. Truly reliable identification requires three items: Name, birth date, and social security number. Name and birth date are not effective substitutes for a social security number because an individual may share the same name and birth date with another. But that

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is not the only reason. Many individuals do not consistently use the same name, sometimes omitting and sometimes using first and middle initials, first and middle names, nick-names, diminutives, married names, hyphenated combinations of birth names and names of spouses, names of parents, names of step-parents, varied spellings of names, anglicized names of non-English origin, and aliases unrelated to any other name used. Individuals not only share birth-dates, they may use birth-dates inconsistently, or birth-dates may be incorrectly recited from memory about selves or (more typically) others. Social security numbers may be recited incorrectly from memory, or may be reproduced from incorrect records. Some individuals, particularly children who have not lived consistently with the same parent, may have been issued more than one Social Security number. All of these things regularly occur in the absence of any fraudulent or dishonest intent. If we did not use social security numbers, we could not reliably record whether the Jack Kennedy who received Medicaid in 1988 is the same individual as John Kennedy who received in 1992, John F. Kennedy who received in 1996, or John Fitzgerald Kennedy who received in 2001. We might confuse John Kennedy with John Kennedy Jr. We might confuse Jack Kennedy with Jackie Kennedy. We might conclude that Jacqueline Bouvier, Jacqueline Lee Bouvier, Jackie Bouvier, Jackie Kennedy, Jacqueline Kennedy, Jacqueline Kennedy-Onassis, Jackie Onassis, and Jacqueline Onassis are eight different individuals. Even using name, birth-date, and social security number is not foolproof. But the social security number, in conjunction with name and birth-date, is the best and most reliable means of consistently distinguishing one individual from another.

Child Support Enforcement. The Department currently uses a unique identifier called a person number. However, that number is used for internal purposes only. To compare information with other states, the federal government, employers, credit bureaus, licensing authorities, and financial institutions, our internal person number is worthless. The social security number is necessary as a common identification number.

Children and Family Services. As indicated above, we must be able to verify that children in certain treatment programs are Medicaid eligible. That cannot be done with name and birth date alone. The refugee populations we deal with are difficult to identify by name or birth date.

Disability Services. Since the Social Security Administration serves millions of people every week, it would be inefficient and error prone to use names or date of birth to check records. The SSA designed its computer system to organize all data by social security number. Earnings information is provided to the SSA via the social security number for computation of retirement and disability benefits. Since DDS uses information from earnings and from the SSA database when working claims, DDS must also use the social security number as the main way to input and retrieve claims data.

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Regional Human Service Centers. It is almost mandatory that the Department's Centers use a unique identifier. For example, we have encountered clients with the same name born on the same date. Therefore, Centers use the name, social security number, and birth date. The only reliable, completely unique identifier of these three is the social security number.

Children's Special Health Services. The use of a social security number is the only way to reliably verify income to determine eligibility.

11. When the Department obtains an individual's medical records from another public entity or hospital, are the medical records obtained pursuant to a specific medical authorization from the individual? If not, under what authority is the Department able to get such records?

Sometimes medical information is disclosed to the Department pursuant to an authorization to release information. Sometimes it is not. The following are some examples of when authorizations are obtained and when they are not.

Medical Services. Because the Department's Medicaid program is a third party payor, we must prior authorize services and review medical records to determine medical necessity for payment purposes. We rely on the provisions of the Medicaid Program, HIPPA, and the authorization provided through the application process so that we can share information between the Department and providers in order to ensure that payments made on behalf of recipients are appropriate and in accordance with federal and state law and regulations. Information is requested by recipient name and ID number and in almost all cases does not require the social security number.

Child Support Enforcement. This division rarely obtains medical records. When it does, it has the power to subpoena the documents, but it is generally easier and more efficient to obtain a release from the individual.

Disability Services. The DDS unit uses the HIPAA compliant Release of Information form developed and printed by the Social Security Administration. This Release of Information is signed by the applicant or beneficiary at the interview in the SSA Field Office. A release is included with each request for medical records.

Children and Family Services. In child abuse and neglect cases, the medical records of a victim are not obtained pursuant to an authorization. N.D.C.C. § 50-25.1-04.4 provides, in relevant part, the following:

Upon the request of a coroner or the presiding officer of a child fatality review panel, any hospital, physician, medical professional, medical facility, mental

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health professional, or mental health facility shall disclose all records of that entity with respect to any child who has or is eligible to receive a certificate of live birth and who has died. The person submitting the request shall reimburse the disclosing entity for the actual costs of assembling and disclosing the information.

Regional Human Service Centers. Generally, all medical information is received by a Center via an authorization executed by the client. However, Centers do receive information from third parties and we do not know whether the client has signed a release authorizing that provider to disclose confidential information. If there is imminent risk of harm in a particular case, we may be able to obtain enough information to address the risk factor without a specific authorization.

Please feel free to contact Melissa Hauer, Director, Legal Advisory Unit at 328-3332 if you have any questions. Thank you.

Sincerely,

Carol K. Olson
Executive Director

c: Melissa Hauer, Director, Legal Advisory Unit

North Dakota Guardianship law

When exercising the authority granted by the court, the guardian shall safeguard the civil rights and personal autonomy of the ward to the fullest extent possible by:

- a. Involving the ward as fully as is practicable in making decisions with respect to the ward's living arrangements, health care, and other aspects of the ward's care; and
- b. Ensuring the ward's maximum personal freedom by using the least restrictive forms of intervention and only as necessary for the safety of the ward or others.

**North Dakota Century Code,
§ 30.1-28-12(5)**

When the Social Services establishment wants to show its muscle, the law is blithely disregarded. The court appointed Mr. Chaussee as David's "guardian," but he was just a flunky for social services.

The lesson in this case is that the people of this state would be safer if the government social workers were imprisoned at the State Hospital instead of their clients. Get one of these control freaks mad, and your freedom is toast.

**"I just wanted to go home
and live with my parents.
Why am I out here?"**

—David Nelson



**Have you ever seen the Chinese
fortune cookie: "Help, I'm a
prisoner at the State Hospital"?**

This is a true story of one of those prisoners, a young man who was enticed by his "guardian" to come to a "medical appointment" at the Southeast Human Services Center in Fargo and then was tasered and hauled out to a locked ward at the Jamestown State Hospital.

Free David Nelson

P.O. Box 413 • Fargo ND 58107

WARNING!!



**You may check in for your
appointment at Southeast,
but you may not check out:**

**the Strange Story
of David Nelson
(prisoner at the State Hospital)**

David Nelson celebrated his 20th birthday on January 8, 2005 at the North Dakota State Hospital in Jamestown. David didn't have much choice about it. He is an adult psychiatric prisoner and could not leave the ward. Nor could he invite any friends in for the day.

But aren't people at the State Hospital psychiatric *patients* who could harm themselves or others if let out on the streets? Why do you call him a "prisoner"?

Listen and hear the *Strange Story of David Nelson*. See if you would call him a "patient" or a "prisoner".

David is quite bright. He gained his GED in the spring of 2004 while living in Grand Forks. It is not an easy test and requires careful preparation.

In August, 1998, Cass County Social Services removed David, then 13, from his parent's home and spun him out into the foster care system. He eventually landed at a reform school in Bemidji because he did not adapt to foster care. David was not a delinquent. Social Services would not send him back home, and he did not like foster care. So they parked him at the reform school. When David turned 18, Social Services decided to keep control of him. They convinced a judge he was "mentally ill" and needed a guardian.

After the Reform School, David was moved briefly to Fargo and then to a rest home in Grand Forks. He was 18 years old and living with people 70 and up. David sent an announcement to his parents in Fargo inviting them to attend his graduation ceremony at the Alerus Center. His Dad was thrilled to hear from David after so many years and drove up for the event. Afterwards, David decided to pack up and go live with his parents in Fargo. They drove home that night.

Enter the Guardian

A day later the court-appointed guardian, William Chaussee, called David's father and asked for a meeting. David, his mother and father, and two friends met with Mr. Chaussee at Mom's Diner. This was the first time Mr. Chaussee had met David. He asked if David and his parents would be agreeable to maintaining a relationship with the Southeast Human Services Center. David would report to a social worker and appear for medical appointments. David and his parents agreed to do this. David said he wanted to live with his parents or near them. He looked forward to resuming the family and neighborhood life he had been denied since he was 13.

And then . . .

The Abduction

A few days later Mr. Chaussee called and said he would pick David up at 8:00 a.m. the next day for a medical appointment at Southeast. The family was happy, having been reunited after so many years. Mr. Nelson, however, had an ominous feeling about the "appointment." He stayed with David when he was called in for his medical exam. The nurse took David's blood pressure and then asked him how tall he was. Before she could weigh him, Fargo police officers appeared. One took David away and the other put his Dad in an arm hold. David protested. The officer hit him twice with a taser, loaded him into a police car, and took him out to Jamestown.

Happy birthday, David. For wanting to live with your parents and have a normal neighborhood life, you are now a psychiatric prisoner at the State Hospital. The lesson of this episode is: make sure you have your affairs in order when you go for a "medical" appointment at Southeast Human Services. You may check in, but you may not check out.

Southeast abducted David Nelson in May, 2004. He has been a prisoner at the North Dakota State Hospital ever since.

—written February 8, 2005