

**Administrative Rules Committee Request
December 15, 2010**

During the September 2010 Administrative Rules Committee meeting, several members of the Administrative Rules Committee asked questions of the Department of Human Services. Following are the questions asked and the answers to those questions.

- 1. Question:** For the purposes of Medicaid how much money does the Department spend on emergency coverage for illegal aliens?

Answer:

- In 2010 there were 5 aliens enrolled, but we only paid emergency medical for 3 of them.
 - Total paid was \$8,482.43.
 - Two of the charges were for birth costs.
 - One charge was for other emergency costs.
- In 2009 there were 4 aliens enrolled, but we only paid emergency medical for 2 of them.
 - Total paid was \$179,906.51.
 - One charge was for birth costs.
 - The other (\$176,186.96) was for two separate periods for an older client with other emergency costs.
- In 2008 there were 4 aliens enrolled, and we paid emergency medical for all 4 of them.
 - Total paid was \$7,506.99
 - Two of the charges were for birth costs.
 - Two were for other emergency costs.

- 2. Question:** How does LIHEAP determine the status of someone who is an illegal alien?

Answer: This answer assumes that "illegal" in this context means "undocumented." There is a question on the application form asking if the client is a U.S. citizen. If that question is answered in the negative, or not at all, the worker would inquire further on the applicant's status. If an applicant has documents, we conclude they are here legally.

3. Question: How does SNAP ensure that someone is not an illegal alien?

Answer: SNAP requires a social security number for each member of an eligible household. Additionally, the following documents may be used to verify an individual's alien status:

I-551 - Resident Alien Card – This card - various versions of which have been issued since 1978 - is proof of Lawful Permanent Resident (LPR) status. Now known as the "Permanent Resident Card," this card was previously known as the "Resident Alien Card" or "Alien Registration Receipt Card." These cards are also commonly referred to as "green cards," even though recent versions of these cards are multi-colored. Until 1989, these cards had no expiration date, but cards now being issued expire 10 years after the date of issue. At the end of the ten years, the LPR does not lose his or her status, but must simply renew the card. Conditional permanent residents are issued cards that are coded "CR" and expire after two years. All I-551 cards include codes showing how the individual obtained LPR status - whether through work skills, as the relative of a U.S. citizen or permanent resident, through the visa lottery, as a refugee or asylee, or otherwise. The cards also indicate the date on which the individual is considered to have obtained permanent resident status. This is often different from the date the person "entered" the U.S.

I-551 - Stamp in Foreign Passport -- When an immigrant is first admitted to the U.S. as an LPR, his or her passport is stamped with temporary proof of LPR status. This stamp, which has an expiration date, may also be placed on the immigrant's I-94 form. The stamp may be renewed as necessary up until the time the immigrant receives an I-551 Permanent Resident Card.

I-151 - Resident Alien Card -- The I-151 is a version of the "green card" that was issued before 1978 as proof of LPR status. Over the years the United States Citizenship and Immigration Services (USCIS) issued several versions of the I-151 card.

Although these cards bear no expiration date, the USCIS decided to discontinue their use and issued regulations providing for their "expiration" as of March 20, 1996. If a person has an "expired" I-151, this does not mean that he or she has lost LPR status; it means only that the I-151 is no longer considered proof of the person's LPR status when he or she applies for a job or attempts to reenter the U.S. Individuals who still have the I-151 should apply for the I-551. Persons who have applied for the I-551 card to replace an earlier version, but who have yet to receive it, may have a receipt from the USCIS or some other document that serves as proof of their LPR status.

I-94 - Arrival/Departure Record -- The I-94 is a 3"x5" card which is issued to almost all noncitizens upon entry to the U.S. It is also issued to individuals who entered the country without inspection and subsequently have contact with the USCIS. The card is stamped or handwritten with a notation that indicates the individual's immigration category or the extension category or the section of the law under which the person is granted admission or parole. The words "Employment Authorization" may also be stamped onto the card. Noncitizens with I-94s include LPR's, persons fleeing persecution, persons with permission to remain in the U.S. based on a pending application, persons in deportation or removal proceedings, nonimmigrants, and undocumented persons whose period of admission or parole has expired.

I-688 - Temporary Resident Card -- Immigrants who legalized their status under the Immigration Reform and Control Act of 1986 (IRCA) were first granted temporary resident status. The temporary resident card has a green stripe on the top. The expiration date on the front of the card is extended by stickers placed on the back. The immigrant may still be in lawful status, even if the I-688 or sticker has expired. The card will be marked at the bottom center with the numbers "245A" or 210" to indicate whether the person legalized under the general

amnesty (INA § 245a program or the farmworker SAW or INA § 210) program.

I-688B - Employment Authorization Document (EAD) -- This document is an earlier version of the Employment Authorization Document for immigrants who have been granted permission to work in the U.S. As with the I-766, there are codes on the front of the card that indicate the person's immigration status and refer to the section of the regulation authorizing employment.

I-766 - Employment Authorization Document (EAD) -- This document is one of several that indicate an immigrant has been granted permission to work in the U.S. Codes on the front of the card indicate the person's immigration status by referencing the subsection of the regulation authorizing employment.

I-571 - Refugee Travel Document -- The refugee travel document is issued to refugees and asylees in the U.S. who want to travel abroad, and to lawful permanent residents who adjust to LPR status after having received refugee or asylee status. The document is used like a passport to enter other countries and return to the U.S.

N-550 and **N-570** - Certificates of Naturalization -- These documents are issued to persons who become U.S. citizens through the naturalization process. The N-550 is the original certificate of naturalization issued by the court. The N-570 is a replacement certificate issued by the USCIS when the original is lost or destroyed.

N-560 and **N-561** - Certificates of Citizenship -- A certificate of citizenship can be obtained by U.S. citizens born abroad who acquired citizenship at birth through a U.S. citizen parent. It can also be obtained by citizens who derive citizenship when their parents naturalized, and by those adopted by U.S. citizens. The N-561 is a replacement certificate.

I-179 and **I-197** - U.S. Citizen ID Cards -- these two identification documents were issued to U.S. citizens, but they are no longer used by USCIS. Cards previously issued to U.S. citizens remain valid indefinitely.

During the application process, an applicant may choose not to provide any information on citizenship. An individual who chooses not to provide information on citizenship, alien status or social security number, can choose to be a non-applicant and declare that early in the application process instead of pending the application and waiting for the verification before processing the application. If an individual chooses to be considered a "non-applicant" they are ineligible for SNAP and must be coded as DI in the system. These individuals must not be reported to USCIS.

In the case of an illegal alien, USCIS makes the determination of whether an individual is an illegal alien. An eligibility worker does not make this determination and must not report an individual to USCIS as an illegal alien unless the following has occurred:

1. Unlawful presence must be a finding of fact or conclusion of law that is made as part of a formal determination that is subject to administrative review on an alien's claim, and
2. The finding or conclusion of unlawful presence must be supported by a determination by USCIS or the Executive Office of Immigration Review, such as a Final Order of Deportation.

Illegal aliens are excluded household members (DI) and are treated the same as an ineligible alien.

*See **attachment A** for further information on reporting an illegal alien to the USCIS.*

- 4. Question:** For the purpose of TANF, what does "lawfully admitted for permanent residence status" mean?

Answer: This language comes from section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

(PRWORA), as amended, 8 U.S.C, 1641. It is based on the Naturalization and Immigration Act.

8 U.S.C. Sec. 1641. Definitions

(a) In general

Except as otherwise provided in this chapter, the terms used in this chapter have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)].

(b) Qualified alien

For purposes of this chapter, the term "qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is –

- (1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.]

5. Question: What program laws exist that restrict the department from disclosing information to law enforcement?

Answer: See **Attachment B** for a list of the laws upon which the Department relies for the confidentiality of applicant information relative to the programs the Department administers.

ATTACHMENT A

[Federal Register: November 21, 2000 (Volume 65, Number 225)]
[Rules and Regulations]
[Page 70133-70212]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr21no00-17]

[[Page 70133]]

Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Part 272 et al.

Food Stamp Program: Noncitizen Eligibility, and Certification
Provisions of Pub. L. 104-193, as Amended by Public Laws 104-208, 105-
33 and 105-185; Final Rule

[[Page 70134]]

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273, 274, and 277

[Amendment No. 388]
RIN 0584-AC40

Food Stamp Program: Noncitizen Eligibility, and Certification
Provisions of Pub. L. 104-193, as Amended by Public Laws 104-208, 105-
33 and 105-185

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes a proposed rule published February 29, 2000, amending Food Stamp Program (Program) regulations to implement several provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), and subsequent amendments to these provisions made by the Omnibus Consolidated Appropriations Act of 1996 (OCAA), the Balanced Budget Act of 1997 (BBA), and the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA). This action finalizes options related to matching activities, fair hearings and recipient services. This action finalizes provisions which would increase State agency flexibility in processing applications for the Program and allow greater use of standard amounts for determining deductions and self-employment expenses. This action also finalizes revisions to the requirements for determining alien eligibility and the eligibility and benefits of sponsored aliens, and requires certain transitional housing payments and most State and local energy assistance to be counted as income, excludes the earnings of students under age 18 from income, and requires proration of benefits following any break in certification.

Other provisions of this final action establish ground rules for implementing the Simplified Food Stamp Program, allow State agencies options to issue partial allotments for households in treatment centers, count all, part, or, in some cases, none of the income of an ineligible alien in determining the benefits of the rest of the household, issue combined allotments to certain expedited service households, and certify elderly or disabled households up to 24 months and other households up to 12 months. The action also finalizes several changes to existing regulations in response to the President's reform initiative to remove overly prescriptive, outdated, and unnecessary regulatory provisions.

The rule also makes final the proposals to add vehicles to the assets which may be covered under the inaccessible resources provisions of the Food Stamp Act of 1977, clarifies the procedures for shortening or lengthening a certification period, and makes a change to exclude from income on-the-job training payments received under the Summer Youth Employment and Training Program as required by Section 702 of the Workforce Investment Act (Pub. L. 102-367, originally known as the Job Training Reform Amendments of 1992).

[Deleted text]

How Must State Agencies Comply With the Requirement To Report Illegal Aliens?

The Department proposed no changes in, nor received any comments on, the requirement in renumbered 7 CFR 273.4(b)(1) to report illegal aliens. However, we are taking this opportunity to recognize the September 28, 2000 (65 FR 58301) publication of the Interagency Notice providing guidance for compliance with PRWORA section 404. PRWORA section 404 requires certain Federal and State entities at least four times annually, to notify the INS of any alien the entity ``knows'' is

not lawfully present in the U.S. The Interagency Notice specifies that a government entity ``knows'' that an alien is present illegally only when the entity's finding or conclusion of unlawful presence is made as part of a formal determination subject to administrative review and is supported by a determination of the INS or the Executive Office of Immigration Review, such a Final Order of Deportation. PRWORA section 404 does not apply to the Food Stamp Program; however, for purposes of complying with the reporting requirement in 7 CFR 273.4(b)(1), the Department considers a State agency to be compliant if it limits its reporting of illegal aliens for food stamp purposes to the standard of ``knowing'' established in the above-cited Interagency Notice. We believe that ``knowing'' that an alien is present illegally as defined in the Interagency Notice is consistent with the State agency ``determining'' that an alien is present illegally as required under 7 CFR 273.4(b)(1), as interpreted to conform with the September 28, 2000 (65 FR 58301) Interagency Notice providing guidance for compliance with PRWORA Sec. 404.

[DELETED TEXT]

ATTACHMENT B

Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program

7 U.S.C. § 2020(e) Requisites of State plan of operation

The State plan of operation required under subsection (d) of this section shall provide, among such other provisions as may be required by regulation--

....

(8) safeguards which limit the use or disclosure of information obtained from applicant households to persons directly connected with the administration or enforcement of the provisions of this chapter, regulations issued pursuant to this chapter, Federal assistance programs, or federally assisted State programs, except that--

(A) the safeguards shall not prevent the use or disclosure of such information to the Comptroller General of the United States for audit and examination authorized by any other provision of law;

(B) notwithstanding any other provision of law, all information obtained under this chapter from an applicant household shall be made available, upon request, to local, State or Federal law enforcement officials for the purpose of investigating an alleged violation of this chapter or any regulation issued under this chapter;

(C) the safeguards shall not prevent the use by, or disclosure of such information, to agencies of the Federal Government (including the United States Postal Service) for purposes of collecting the amount of an overissuance of coupons, as determined under section 2022(b) of this title, from Federal pay (including salaries and pensions) as authorized pursuant to section 5514 of title 5 or a Federal income tax refund as authorized by section 3720A of title 31;

(D) notwithstanding any other provision of law, the address, social security number, and, if available, photograph of any member of a household shall be made available, on request, to any Federal, State, or local law enforcement officer if the officer furnishes the State agency with the name of the member and notifies the agency that--

(i) the member--

(I) is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) that, under the law of the place the member is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor), or is violating a condition of probation or parole imposed under Federal or State law; or

(II) has information that is necessary for the officer to conduct an official duty related to subclause (I);

(ii) locating or apprehending the member is an official duty; and

(iii) the request is being made in the proper exercise of an official duty; and

(E) the safeguards shall not prevent compliance with paragraph (16) or (20)(B);

....

(16) notwithstanding paragraph (8) of this subsection, for the immediate reporting to the Immigration and Naturalization Service by the State agency of a determination by personnel responsible for the certification or recertification of households that any member of a household is ineligible to receive food stamps because that member is present in the United States in violation of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.];

Adoption and Foster Care (State plan for foster care and adoption assistance)
42 U.S.C. § 671(a)(8) and (9):

(a) Requisite features of State plan

In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which--

....

(8) subject to subsection (c), provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, or D of this subchapter or under subchapter I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX of this chapter, or the supplemental security income program established by subchapter XVI of this chapter, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity, and (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

(9) provides that the State agency will--

- (A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under part B of this subchapter or this part under circumstances which indicate that the child's health or welfare is threatened thereby; and
- (B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;

Health Insurance Portability and Accountability Act (HIPAA)

45 C.F.R. § 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required. A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.

(a) *Standard: Uses and disclosures required by law.*

- (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.
- (2) A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law.

(f) *Standard: Disclosures for law enforcement purposes.* A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable.

(1) *Permitted disclosures: Pursuant to process and as otherwise required by law.* A covered entity may disclose protected health information:

- (i) As required by law including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to paragraph (b)(1)(ii) or (c)(1)(i) of this section; or
- (ii) In compliance with and as limited by the relevant requirements of:

- (A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;
- (B) A grand jury subpoena; or
- (C) An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:

- (1) The information sought is relevant and material to a legitimate law enforcement inquiry;

(2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and

(3) De-identified information could not reasonably be used.

(2) Permitted disclosures: Limited information for identification and location purposes. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:

(i) The covered entity may disclose only the following information:

(A) Name and address;

(B) Date and place of birth;

(C) Social security number;

(D) ABO blood type and rh factor;

(E) Type of injury;

(F) Date and time of treatment;

(G) Date and time of death, if applicable; and

(H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

(ii) Except as permitted by paragraph (f)(2)(i) of this section, the covered entity may not disclose for the purposes of identification or location under paragraph (f)(2) of this section any protected health information related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.

(3) Permitted disclosure: Victims of a crime. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime, other than disclosures that are subject to paragraph (b) or (c) of this section, if:

(i) The individual agrees to the disclosure; or

(ii) The covered entity is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:

(A) The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;

(B) The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and

(C) The disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

(4) **Permitted disclosure: Decedents.** A covered entity may disclose protected health information about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if the covered entity has a suspicion that such death may have resulted from criminal conduct.

(5) **Permitted disclosure: Crime on premises.** A covered entity may disclose to a law enforcement official protected health information that the covered entity believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the covered entity.

(6) **Permitted disclosure: Reporting crime in emergencies.**

(i) A covered health care provider providing emergency health care in response to a medical emergency, other than such emergency on the premises of the covered health care provider, may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to:

(A) The commission and nature of a crime;

(B) The location of such crime or of the victim(s) of such crime; and

(C) The identity, description, and location of the perpetrator of such crime.

(ii) If a covered health care provider believes that the medical emergency described in paragraph (f)(6)(i) of this section is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, paragraph (f)(6)(i) of this section does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to paragraph (c) of this section.

Medicaid

42 C.F.R. § 431.300-306

Subpart F—Safeguarding Information on Applicants and Recipients

SOURCE: 44 FR 17934, Mar. 29, 1979, unless otherwise noted.

42 C.F.R. § 431.300 Basis and purpose.

(a) Section 1902(a)(7) of the Act requires that a State plan must provide safeguards that restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan. This subpart specifies State plan requirements, the types of information to be safeguarded, the conditions for release of safeguarded information, and restrictions on the distribution of other information.

(b) Section 1137 of the Act, which requires agencies to exchange information in order to verify the income and eligibility of applicants and recipients (see § 435.940ff), requires State agencies to have adequate safeguards to assure that—

- (1) Information exchanged by the State agencies is made available only to the extent necessary to assist in the valid administrative needs of the program receiving the information, and information received under section 6103(l) of the Internal Revenue Code of 1954 is exchanged only with agencies authorized to receive that information under that section of the Code; and
- (2) The information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.

42 C.F.R. § 431.301 State plan requirements. A State plan must provide, under a State statute that imposes legal sanctions, safeguards meeting the requirements of this subpart that restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan.

42 C.F.R. § 431.302 Purposes directly related to State plan administration.

Purposes directly related to plan administration include—

- (a) Establishing eligibility;
- (b) Determining the amount of medical assistance;
- (c) Providing services for recipients; and
- (d) Conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the plan.

42 C.F.R. § 431.303 State authority for safeguarding information.

The Medicaid agency must have authority to implement and enforce the provisions specified in this subpart for safeguarding information about applicants and recipients.

42 C.F.R. § 431.304 Publicizing safeguarding requirements.

- (a) The agency must publicize provisions governing the confidential nature of information about applicants and recipients, including the legal sanctions imposed for improper disclosure and use.
- (b) The agency must provide copies of these provisions to applicants and recipients and to other persons and agencies to whom information is disclosed.

42 C.F.R. § 431.305 Types of information to be safeguarded.

(a) The agency must have criteria that govern the types of information about applicants and recipients that are safeguarded.

(b) This information must include at least—

- (1) Names and addresses;
- (2) Medical services provided;
- (3) Social and economic conditions or circumstances;
- (4) Agency evaluation of personal information;
- (5) Medical data, including diagnosis and past history of disease or disability; and

(6) Any information received for verifying income eligibility and amount of medical assistance payments (see § 435.940ff). Income information received from SSA or the Internal Revenue Service must be safeguarded according to the requirements of the agency that furnished the data.

(7) Any information received in connection with the identification of legally liable third party resources under

42 C.F.R. § 431.306 Release of information.

(a) The agency must have criteria specifying the conditions for release and use of information about applicants and recipients.

(b) Access to information concerning applicants or recipients must be restricted to persons or agency representatives who are subject to standards of confidentiality that are comparable to those of the agency.

(c) The agency must not publish names of applicants or recipients.

(d) The agency must obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment under section 1137 of this Act and §§ 435.940 through 435.965 of this chapter. If, because of an emergency situation, time does not permit obtaining consent before release, the agency must notify the family or individual immediately after supplying the information.

(e) The agency's policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials.

(f) If a court issues a subpoena for a case record or for any agency representative to testify concerning an applicant or recipient, the agency must inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information.

(g) Before requesting information from, or releasing information to, other agencies to verify income, eligibility and the amount of assistance under §§ 435.940 through 435.965 of this chapter, the agency must execute data exchange agreements with those agencies, as specified in § 435.945(f).

(h) Before requesting information from, or releasing information to, other agencies to identify legally liable third party resources under § 433.138(d) of this chapter, the agency must execute data exchanges agreements, as specified in § 433.138(h)(2) of this chapter.

Temporary Assistance for Needy Families (TANF)

45 C.F.R. § 205.50 Safeguarding information for the financial assistance programs.

(a) *State plan requirements.* A State plan for financial assistance under title IV-A of the Social Security Act, must provide that:

(1) Pursuant to State statute which imposes legal sanctions:

(i) The use or disclosure of information concerning applicants and recipients will be limited to purposes directly connected with:

(A) The administration of the plan of the State approved under title IV-A, the plan or program of the State under title IV-B, IV-D, IV-E, or IV-F or under title I, X, XIV, XVI (AABD), XIX, XX, or the Supplemental Security Income (SSI) program established by title XVI. Such purposes include establishing eligibility, determining the amount of assistance, and providing services for applicants and recipients.

(B) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such plans or programs.

(C) The administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need.

(D) The verification to the Employment Security Agency, or other certifying agency that an individual has been an AFDC recipient for at least 90 days or is a WIN or WIN Demonstration participant pursuant to Pub. L. 97-34, the Economic Recovery Tax Act of 1981.

(E) Any audit or similar activity, e.g., review of expenditure reports or financial review, conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity.

(F) The administration of a State unemployment compensation program.

(G) The reporting to the appropriate agency or official of information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under circumstances which indicate that the child's health or welfare is threatened.

(ii) The State agency has authority to implement and enforce the provisions for safeguarding information about applicants and recipients:

(iii) Disclosure of any information that identifies by name or address any applicant or recipient to any Federal, State, or local committee or legislative body other than in connection with any activity under paragraph (a)(1)(i)(E) of this section is prohibited.

(iv) Publication of lists or names of applicants and recipients will be prohibited. *Exception.* In respect to a State plan for financial assistance under title I, IVA, X, XIV, or XVI (AABD) of the Social Security Act, an exception to this restriction may be made by reason of the enactment or enforcement of State legislation, prescribing any conditions under which public access may be had to records of the disbursement of funds or payments under such titles within the State, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes.

(v) The State or local agency responsible for the administration of the State plan has authority to disclose the current address of a recipient to a

State or local law enforcement officer at his or her request. Such information is disclosed only to law enforcement officers who provide the name and Social Security number of the recipient and satisfactorily demonstrate that:

- (A) The recipient is a fugitive felon (as defined by the State);
 - (B) The location or apprehension of such felon is within the law officer's official duties; and
 - (C) The request is made in the proper exercise of those duties.
- (2) The agency will have clearly defined criteria which govern the types of information that are safeguarded and the conditions under which such information may be released or used. Under this requirement:
- (i) Types of information to be safeguarded include but are not limited to:
 - (A) The names and addresses of applicants and recipients and amounts of assistance provided (unless excepted under paragraph (a)(1)(iv) of this section);
 - (B) Information related to the social and economic conditions or circumstances of a particular individual including information obtained from any agency pursuant to § 205.55; information obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA) must be safeguarded in accordance with procedures set forth by those agencies;
 - (C) Agency evaluation of information about a particular individual;
 - (D) Medical data, including diagnosis and past history of disease or disability, concerning a particular individual.
 - (ii) The release or use of information concerning individuals applying for or receiving financial assistance is restricted to persons or agency representatives who are subject to standards of confidentiality which are comparable to those of the agency administering the financial assistance programs.
 - (iii) Except in the case of information requested pursuant to §§ 205.55 and 205.56, or in the case of an emergency situation when the individual's prior consent for the release of information cannot be obtained, the family or individual is informed whenever possible of a request for information from an outside source, and permission is obtained to meet the request. In an emergency situation when the individual's consent for the release of information cannot be obtained, the individual will be notified immediately.
 - (iv) In the event of the issuance of a subpoena for the case record or for any agency representative to testify concerning an applicant or recipient, the court's attention is called, through proper channels to the statutory provisions and the policies or rules and regulations against disclosure of information.
 - (v) The same policies are applied to requests for information from a governmental authority, the courts, or a law enforcement officer (except as provided for under paragraph (a)(1)(v) with respect to fugitive felons) as from any other outside source.

- (3) (i) The agency will publicize provisions governing the confidential nature of information about applicants and recipients, including the legal sanctions imposed for improper disclosure and use, and will make these provisions available to applicants and recipients and to other persons and agencies to whom information is disclosed.
- (ii) All information obtained pursuant to the income and eligibility verification requirements at §§ 205.55 and 205.56 will be stored and processed so that no unauthorized personnel can acquire or retrieve the information by any means.
- (iii) All persons with access to information obtained pursuant to the income and eligibility verification requirements under §§ 205.55 and 205.56 will be advised of the circumstances under which access is permitted and the sanctions imposed for illegal use or disclosure of the information.

(4) All materials sent or distributed to applicants, recipients, or medical vendors, including material enclosed in envelopes containing checks, will be limited to those which are directly related to the administration of the program and will not have political implications except to the extent required to implement the National Voter Registration Act of 1993 (NVRA), Pub. L. 103-31. Under this requirement:

- (i) Specifically excluded from mailing or distribution are materials such as "holiday" greetings, general public announcements, alien registration notices, and partisan voting information.
- (ii) Not prohibited from such mailing or distribution are materials in the immediate interest of the health and welfare of applicants and recipients, such as announcements of free medical examinations, availability of surplus food, and consumer protection information;
- (iii) Only the names of persons directly connected with the administration of the program are contained in material sent or distributed to applicants, recipients, and vendors, and such persons are identified only in their official capacity with the State or local agency. (iv) Under NVRA, the agency must distribute voter information and registration materials as specified in NVRA.

(b) *Voluntary voter registration activities.* For States that are exempt from the requirements of NVRA, voter registration may be a voluntary activity so long as the provisions of section 7(a)(5) of NVRA are observed.

(c) *State plan requirements for programs of financial assistance in Puerto Rico, the Virgin Islands, and Guam.* A State plan under title I, X, XIV, or XVI (AABD) of the Social Security Act must meet all the requirements of paragraph (a) of this section, with the exception of paragraphs (a)(1)(i) (D) and (E), of this section, and also provide for disclosure of information concerning applicants and recipients for use by public officials who require such information in connection with their official duties. Under this requirement, such information shall be available only to public officials who certify in writing that:

- (1) They are public officials as defined by State or Federal law of general applicability; and
- (2) The information to be disclosed and used is required in connection with their official duties.

Vocational Rehabilitation

34 C.F.R. § 361.38 Protection, use, and release of personal information.

(e) *Release to other programs or authorities.*

(1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, the State unit may release personal information to another agency or organization for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

(2) Medical or psychological information that the State unit determines may be harmful to the individual may be released if the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The State unit must release personal information if required by Federal law or regulations.

(4) The State unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

Alcohol and Drug Records

42 C.F.R. § 2.65 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.

(a) *Application.* An order authorizing the disclosure or use of patient records to criminally investigate or prosecute a patient may be applied for by the person holding the records or by any person conducting investigative or prosecutorial activities with respect to the enforcement of criminal laws. The application may be filed separately, as part of an application for a subpoena or other compulsory process, or in a pending criminal action. An application must use a fictitious name such as John Doe, to refer to any patient and may not contain or otherwise disclose patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice and hearing.* Unless an order under § 2.66 is sought with an order under this section, the person holding the records must be given:

(1) Adequate notice (in a manner which will not disclose patient identifying information to third parties) of an application by a person performing a law enforcement function;

(2) An opportunity to appear and be heard for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order; and

(3) An opportunity to be represented by counsel independent of counsel for an applicant who is a person performing a law enforcement function.

(c) *Review of evidence: Conduct of hearings.* Any oral argument, review of evidence, or hearing on the application shall be held in the judge's chambers or in some other manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceedings, the patient, or the person holding the records. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria.* A court may authorize the disclosure and use of patient records for the purpose of conducting a criminal investigation or prosecution of a patient only if the court finds that all of the following criteria are met:

(1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.

(2) There is a reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.

(3) Other ways of obtaining the information are not available or would not be effective.

(4) The potential injury to the patient, to the physician-patient relationship and to the ability of the program to provide services to other patients is outweighed by the public interest and the need for the disclosure.

(5) If the applicant is a person performing a law enforcement function that:

(i) The person holding the records has been afforded the opportunity to be represented by independent counsel; and

(ii) Any person holding the records which is an entity within Federal, State, or local government has in fact been represented by counsel independent of the applicant.

(e) *Content of order.* Any order authorizing a disclosure or use of patient records under this section must:

(1) Limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting, the investigation or prosecution, and limit their use of the records to investigation and prosecution of extremely serious crime or suspected crime specified in the application; and

(3) Include such other measures as are necessary to limit disclosure and use to the fulfillment of only that public interest and need found by the court.