

it by law;

(18)(A) The department is specifically authorized to establish any programs for the use of volunteers who may be able to provide assistance to the department in any of the services that are vested in it by law or that it may provide as a necessary part of such services. To the extent funds are available, and if necessary and desirable, the department may reimburse such volunteers for actual travel or other reasonable expenses for their services. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter. Meals may be furnished without charge at department facilities if the scheduled volunteer assignment extends over an established meal period. The department may use any funds available, including federal, state or local funds or private donations, that it has for any expenses associated with these programs;

(B) Any volunteers who are registered by the department with the board of claims shall be accorded the same protections, legal representation authorization and immunities as state employees pursuant to title 8, chapter 42, and § 9-8-307 for civil or criminal actions brought against them within the scope and course of their activities in such volunteer programs; provided, however, that they shall not be covered by workers' compensation pursuant to § 9-8-307; and

(C) Volunteers may use state vehicles when their assignments so require, subject to the approval of the department and in compliance with any policies or rules or regulations that may be promulgated by the department;

(19) Administer and fully implement the multi-level response system for children and families, compiled in part 6 of this chapter, including making such contracts as may be necessary to carry out the evaluations called for in that part;

(20) Review the status of any person who has reached eighteen (18) years of age who was in the legal custody of the department and whose last commitment was based on an adjudication of dependent and neglected, unruly or in need of services pursuant to § 37-1-175, to determine if the person should receive services from the department in order to complete high school or other educational training or for the purpose of receiving other services. The department may provide services to the person who chooses to receive services from the department on a voluntary basis, subject to funding availability, budgetary constraints and compliance with department policy; and

(21) Review the status of any person who has reached nineteen (19) years of age who was in the legal custody of the department and whose last commitment was based on an adjudication of delinquency to determine if the person should receive services from the department in order to complete

high school or other educational training or for the purpose of receiving other services. The department may continue to provide services to the person who chooses to receive services from the department on a voluntary basis, subject to funding availability, budgetary constraints and compliance with department policy.

(b) The attorney general and reporter shall, upon request, advise the department on matters of law.

History.

Acts 1996, ch. 1079, § 7; 2000, ch. 947, § 6; 2000, ch. 981, §§ 51, 60; 2003, ch. 355, § 24; 2004, ch. 740, § 1; 2005, ch. 391, § 12; 2008, ch. 906, § 4; 2010, ch. 1100, §§ 60, 61; 2011, ch. 47, § 29; 2012, ch. 575, § 1.

Compiler's Notes.

Acts 2003, ch. 355, § 66 provided that no expenditure of public funds pursuant to the act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2011, ch. 47, § 107 provided that nothing in the legislation shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before July 1, 2011.

Acts 2011, ch. 47, § 108 provided that the provisions of the act are declared to be remedial in nature and all provisions of the act shall be liberally construed to effectuate its purposes.

37-5-107. Confidentiality of records.

(a) All applications, certificates, records, reports and all legal documents, petitions and records made or information received pursuant to this title that directly or indirectly identify a child or family receiving services from the department or that identify the person who made a report of harm pursuant to § 37-1-403 or § 37-1-605 shall be kept confidential and shall not be disclosed, except as provided by this section and §§ 37-1-131, 37-1-409, 37-1-612 and 49-6-3051.

(b) The department may use or release information in the following circumstances:

(1) The department may utilize any information it has or may acquire to provide services to the child; and

(2) The department may release records to a person or entity that may be providing system or program evaluation.

(c) The department shall release information in the following circumstances:

(1) Upon request, the department shall release records to any child abuse review teams or child fatality review teams that are created or authorized by state law to review the activities of the department or to evaluate or investigate the cause of injury to or death of a child;

(2) Records to any law enforcement agency, grand jury or court upon presentation of an appropriate court order;

(3) Upon written request, records to any federal, state or local government entity or agent of such

entity that has a need for the information in order to carry out its responsibilities under law to protect children from abuse and neglect in compliance with 42 U.S.C. § 5106a(b)(2)(B)(ix);

(4)(A) To provide for the public disclosure of information about any case that results in a child fatality or near fatality in compliance with 42 U.S.C. § 5106a(b)(2)(B)(x). For purposes of this subdivision (c)(4)(A), "near fatality" means a child had a serious or critical medical condition resulting from child abuse or child sexual abuse, as reported by a physician who has examined the child subsequent to the abuse;

(B) When the department investigates a child fatality for abuse or neglect, the department shall release the following information, to the extent known, within five (5) business days of the fatality:

- (i) The child's age;
- (ii) The child's gender; and
- (iii) Whether the department has had history with the child.

(C) Following the closure of an investigation for a child abuse or neglect fatality, the department shall release the final disposition of the case, whether the case meets criteria for a child death review and the full case file. The case file may be redacted to comply with the confidentiality requirements of this section.

(D) Following the department's final classification of a child abuse or neglect near fatality, the department shall release the full case file. The case file may be redacted to comply with the confidentiality requirements of this section.

(5) Records to any person or entity that provides system or program evaluation at the request of the department;

(6) To the commission on children and youth any and all records requested by the commission that the commission believes necessary to perform its duties and responsibilities pursuant to § 37-3-103, particularly for the purpose of evaluating the delivery of services to children and their families served by the department; and

(7) Upon written request, records to any person who is the subject of a report made to the department, or to the person's parent or legal guardian if the person is a minor and the parent or legal guardian is not the alleged perpetrator of or in any way responsible for the child abuse, child neglect or child sexual abuse against the child whose records are being requested. A person provided access to records pursuant to this subdivision (c)(7) shall maintain the confidentiality of the records except to the extent necessary for proper supervision, care or treatment of the subject of the report.

(d) Pursuant to subdivision (c)(3), the department shall disclose records and information to any member of the general assembly to enable the member to determine whether the laws of this state are being complied with to protect children from abuse and neglect and whether the laws of this state need to be changed to enhance such protection; provided, that the procedures set out in subdivisions (d)(1)-(3) and any

other procedures required by law are followed.

(1) If a member of the general assembly receives a written inquiry regarding whether the laws of this state that protect children from abuse and neglect are being complied with or whether the laws of this state need to be changed to enhance protection of children, the member of the general assembly may submit a written request to the department, requesting review of the records and information relating to the inquiry. The member's request shall state the name of the child whose case file is to be reviewed and any other information that will assist the department in locating the information.

(2) The member shall sign a form, before reviewing the records and information, that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of the information. All records and information being reviewed by any member shall remain in the department's possession.

(3) After reviewing the records and information, if the member requests additional information, the department shall discuss the circumstances related to the records and information being disclosed.

(e)(1) Any person or entity, including the commission on children and youth, that is provided access to records under this section shall be required to maintain the records in accordance with state and federal laws and regulations regarding confidentiality.

(2) It is an offense for any person who has received or has been provided access to confidential information pursuant to this section to knowingly disclose or knowingly cause to be disclosed the information to any person or entity not otherwise provided access to the records by law.

(3) A violation of this subsection (e) is a Class B misdemeanor.

(f) Upon placement of a child in the custody of the department of children's services, all state, county and local agencies shall, notwithstanding any state laws or regulations to the contrary, grant access to any and all records in their possession that relate to the child for use by the department of children's services to determine a child's condition, needs, treatment or any other area of management; provided, however, that release of health care information must be consistent with the laws and policies of the departments of health, mental health and substance abuse services, and intellectual and developmental disabilities. The department of children's services shall comply with federal statutes and regulations concerning confidentiality of records. Any records that are confidential by law upon the enactment of this legislation shall be maintained as confidential by the department of children's services.

(g) Except as otherwise provided pursuant to 20 U.S.C. § 1232g(b)(1), prior to the release of student records, the local education agency must give written notice to the student and parent as required by 20 U.S.C. § 1232g(b)(1), and must provide the parent with a copy of all records released.

(h) Release of drug and alcohol records must comply with federal and state laws and regulations regarding the release of these records.

(i) Except as provided for in subsection (c)(2), nothing in this section shall ever be construed to permit or require the department to release or disclose the identification of the person making a report of harm in accordance with § 37-1-403.

(j) The department, in consultation with the commission on children and youth, shall adopt rules and regulations that may be necessary to establish administrative and due process procedures for the disclosure of records and other information pursuant to this section.

History.

Acts 1996, ch. 1079, § 8; imp. am. Acts 2000, ch. 947, § 6; 2008, ch. 1146, § 1; 2009, ch. 86, §§ 1, 2; 2009, ch. 358, § 4; 2010, ch. 1100, § 62; 2012, ch. 575, § 1; 2014, ch. 771, § 1.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

37-5-108. Conflict of interest.

The department has the power and authority to establish by policy, rule or regulation provisions for prohibition of any conflict of interest that may occur within the department of children's services that may affect the constitutional rights of a child being served by the department of children's services. The department shall exercise this power and authority consistent with the provisions regarding conflicts of interest under title 12, chapter 4, part 1.

History.

Acts 1996, ch. 1079, § 9.

37-5-109. Licensing.

The responsibility for licensing children's programs, agencies, group homes, institutions or any other entity serving children that requires a license by law in Tennessee is as follows:

(1) The department of children's services shall license or approve and supervise child abuse agencies, child caring institutions, child placing agencies, detention centers, family boarding or foster care homes, group care homes, maternity homes and temporary holding resources. Not later than January 1, 1999, the department shall develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children. Exceptions to the department's licensing responsibilities concerning the aforementioned categories are contained in § 37-5-503;

(2) The department of human services shall license or approve and supervise child care centers, family child care homes and group child care homes. Exceptions to the department's licensing responsibilities concerning the aforementioned categories are

contained in § 71-3-503;

(3) The department of mental health and substance abuse services shall license or approve and supervise any institution, treatment resource, group residence, boarding home, sheltered workshop, activity center, rehabilitation center, hospital, community mental health center, counseling center, clinic, half-way house or other entity, by these or other names, providing mental health, intellectual disability or developmental disability services, respectively, or as required by title 33, chapter 2, part 4. Exceptions to the licensing responsibilities of the department of mental health and substance abuse services concerning the aforementioned categories are contained in § 33-2-403;

(4) Any programs or portions of programs, or any place, home, facility, institution or other entity that is otherwise subject to licensure or approval by any other agency as required by law, shall continue to be licensed or approved by that agency unless notified to the contrary by the department of children's services; and

(5) Subject to the exemptions set out in § 37-5-503, and pursuant to promulgated rules and regulations, the department will license or approve or supervise any entity that provides residential services to children and is not otherwise subject to licensure, approval, certification or supervision by any other agency as required by state law.

History.

Acts 1996, ch. 1079, § 10; 1998, ch. 1097, § 28; 2000, ch. 947, §§ 6, 8I, 8L, 8M; 2000, ch. 981, § 61; imp. am. Acts 2000, ch. 947, § 6; 2010, ch. 1100, § 63; 2012, ch. 575, § 1.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

37-5-110. Contracts/Leases.

(a) Contracts or leases entered into prior to May 21, 1996, with respect to any program or function transferred to the department of children's services with any entity, corporation, agency, enterprise or person, shall continue in full force and effect as to all essential provisions in accordance with the terms and conditions of the contracts in existence on May 21, 1996, to the same extent as if such contracts had originally been entered into by and between such entity, corporation, agency, enterprise or person and the department of children's services, unless and until such contracts or leases are amended or modified by the parties thereto or until the expiration of such contract.

(b) This chapter shall not be implemented in any manner that violates the prohibition against impairment of contract obligations as contained in article I, § 20 of the Constitution of Tennessee.