

MEMORANDUM

To: Child, Families, Health and Human Services Interim Committee
From: Wyatt A. Glade
Date: January 4, 2018
Subject: SB 229

FACTS

DPHHS conducts investigations regarding allegations of child abuse and neglect. Exposing a child to drugs is child abuse or neglect. It is common practice for the Department to conduct drug testing on children whom have been abused or neglected during the course of the Department's investigations. When the Department finds that children were abused or neglected, the Department may initiate a civil action to ensure that the children are protected. This process may result in reunification of the family, placement of the children with appropriate care givers, or termination of parental rights followed by adoption.

DPHHS is also statutorily required to cooperate with other agencies, particularly law enforcement. 41-3-107 MCA. It is a crime to expose children to drugs, particularly methamphetamine. 45-5-622(3) MCA. Prior to the 2017 legislature's passing SB 229, the department was not required to provide the results of those drug tests to law enforcement.

In the 2017 session ,the Montana Legislature amended 41-3-205(5) MCA to include section (c), which contains the following language:

“(i) The department shall promptly disclose the results of an investigation to an individual described in subsection (4)(a) or to a county interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the determination that:

(A) there is reasonable cause to suspect that a child has been exposed to a Schedule I or Schedule II drug whose manufacture, sale, or possession is prohibited under state law; or

(B) a child has been exposed to drug paraphernalia used for the manufacture, sale, or possession of a Schedule I or Schedule II drug that is prohibited by state law.

(ii) For the purposes of this subsection (4)(c), exposure occurs when a child is caused or permitted to inhale, have contact with, or ingest a Schedule I or Schedule II drug that is

prohibited by state law or have contact with drug paraphernalia as defined in 45-10-101.”

The Department has taken the position that this statute does not require the Department to disclose to law enforcement the results of toxicology testing on children. Thus, a law enforcement officer investigating one of these cases is not provided with the actual test results, which are likely the most important piece of evidence in the investigation. The officer must obtain a court order to obtain the test results. This process requires the involvement of prosecutors and judges, which burns up time and resources that could be better spent elsewhere.

ISSUE

I. Must the DPHHS disclose the results of toxicology reports to law enforcement pursuant to SB 229?

SHORT ANSWER

I. Yes. The plain meaning of the law requires that DPHHS disclose its entire investigation, including the test results to law enforcement. 42 USCS § 290dd-2 does not prohibit disclosure, because it does not apply to this situation. Even if it does apply, there is an exception in 42 USCS § 290dd-2 that allows for this type of disclosure.

RATIONALE

The plain meaning of 41-3-205(5) MCA clearly requires that the Department disclose the results of its investigation to law enforcement. Obviously, the drug test results are part of the investigation, and must be disclosed as well. “The intention of the Legislature must first be determined from the plain meaning of the words used, and if interpretation of the statute can be so determined, the courts may not go further and apply any other means of interpretation” *Dunphy v. Anaconda Co.*, 151 Mont. 76 (1968). Having established that the plain meaning of the statute requires disclosure of the drug testing results, the question remains; “Why does the department believe that it is not required to disclose the results of the drug tests?”

According to a DPHHS interoffice memorandum dated July 17, 2017, which has been attached to this document, the Department believes that the federal Confidentiality of Alcohol and Drug abuse Patient Records Act restricts disclosure of the test results. The author of the memo opines that the Department may disclose the results of the investigation, but not the test results themselves. However, the federal law does not restrict disclosure because it does not apply. Even if it does apply, there is an exception for mandatory reporting of child abuse.

THE FEDERAL LAW DOES NOT APPLY

DPHHS assumes that the Confidentiality of Alcohol and Drug abuse Patient Records Act, codified at 42 USC 290-dd-2, applies to drug tests performed on abused children. However, the memorandum does not explain how DPHHS arrived at that conclusion. A thorough reading of the law reveals that it does not apply to the situation at hand.

42 USCS § 290dd-2, the law that restricts disclosure of patient records, states as follows: “**Records** of the identity, diagnosis, prognosis, or treatment of any **patient** which are maintained in connection with the performance of any **program** or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States **shall**, except as provided in subsection (e), **be confidential** and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b).”
42 USCS § 290dd-2, emphasis added.

Thus, for the childrens’ drug test records to be restricted, the children must be patients, and DPHHS must be a part 2 program. Neither are true.

THESE CHILDREN ARE NOT PATIENTS

“**Patient** means any individual who has applied for or been given diagnosis, treatment, or referral for treatment for a substance use disorder at a **part 2 program**. Patient includes any individual who, after arrest on a criminal charge, is identified as an individual with a substance use disorder in order to determine that individual's eligibility to participate in a part 2 program. This definition includes both current and former patients.” 42 C.F.R. § 2.11, emphasis added.

The children in these cases are not patients as defined above. They have not applied for or been given a diagnosis, treatment or referral for treatment for a substance use disorder. They are the victims of involuntary drug exposure. The drug tests are performed on them to determine whether they have been abused or neglected as part of DPHHS’ statutory mandate to investigate child abuse and neglect.

DPHHS IS NOT A PART 2 PROGRAM

“Part 2 program means a federally assisted program.” 42 C.F.R. § 2.11

DPHHS, is a political subdivision of the State of Montana, not a federally funded substance abuse treatment provider. The purpose of the Department, particularly in the realm of family services, is to “provide protective services to ensure health, welfare, and safety of children and adults who are in danger of abuse, neglect, or exploitation within communities.” 52-1-101(1) MCA. Thus, it does not appear that the DPHHS is a Part 2 Program.

These children are not “patients.” DPHHS is not a “part 2 program.” Thus, 42 USCS § 290dd-2 does not restrict disclosure of the childrens’ drug test records because it does not apply. DPHHS must disclose the results of their investigations in these circumstances to law enforcement officers, including any drug testing results, without further judicial intervention.

EVEN IF 42 USCS § 290dd-2 DOES APPLY TO THESE TEST RESULTS, AN EXCEPTION ALLOW FOR DISCLOSURE

Even assuming, for the sake of argument, that 42 USCS § 290dd-2 restricts disclosure of the childrens' drug test records, an exception within the law allows for it.

“(e) Nonapplicability. The prohibitions of this section do not apply to any interchange of records--

(1) within the Uniformed Services or within those components of the Department of Veterans Affairs furnishing health care to veterans; or

(2) between such components and the Uniformed Services.

The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.” 42 USCS § 290dd-2, emphasis added.

Thus, the law does not restrict disclosure of the drug test results to law enforcement, as required by 41-3-205(5) MCA. DPHHS must disclose the test results along with the remainder of their investigation to law enforcement 41-3-205(5) applies.

CONCLUSION

Thus, nothing from 42 USCS § 290dd-2 restricts disclosure of these test results to law enforcement. Because disclosure is not restricted, DPHHS must disclose the results of the drug tests to law enforcement pursuant to 41-5-205 MCA. Furthermore, even if 42 USCS § 290dd-2 applies to this situation, an exception within paragraph (e) allows for the disclosure. Therefore, DPHHS is not restricted from complying with 41-5-205 MCA, and must disclose their entire investigative file, including any drug test results when 41-5-205 MCA applies.



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42 USCS § 290dd-2

Current through PL 115-96, approved 12/22/17, with a gap of 115-91

United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 6A. THE PUBLIC HEALTH SERVICE > SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION > MISCELLANEOUS PROVISIONS RELATING TO SUBSTANCE ABUSE AND MENTAL HEALTH

§ 290dd-2. Confidentiality of records

- (a) Requirement. Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e), be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b).
- (b) Permitted disclosure.
- (1) Consent. The content of any record referred to in subsection (a) may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g).
 - (2) Method for disclosure. Whether or not the patient, with respect to whom any given record referred to in subsection (a) is maintained, gives written consent, the content of such record may be disclosed as follows:
 - (A) To medical personnel to the extent necessary to meet a bona fide medical emergency.
 - (B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.
 - (C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor, including the need to avert a substantial risk of death or serious bodily harm. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.
- (c) Use of records in criminal proceedings. Except as authorized by a court order granted under subsection (b)(2)(C), no record referred to in subsection (a) may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

- (d) Application. The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when such individual ceases to be a patient.
- (e) Nonapplicability. The prohibitions of this section do not apply to any interchange of records--
- (1) within the Uniformed Services or within those components of the Department of Veterans Affairs furnishing health care to veterans; or
 - (2) between such components and the Uniformed Services.
- The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.
- (f) Penalties. Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined in accordance with title 18, United States Code.
- (g) Regulations. Except as provided in subsection (h), the Secretary shall prescribe regulations to carry out the purposes of this section. Such regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C), as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.
- (h) Application to Department of Veterans Affairs. The Secretary of Veterans Affairs, acting through the Chief Medical Director [Under Secretary for Health of the Department of Veterans Affairs], shall, to the maximum feasible extent consistent with their responsibilities under title 38, United States Code, prescribe regulations making applicable the regulations prescribed by the Secretary of Health and Human Services under subsection (g) of this section to records maintained in connection with the provision of hospital care, nursing home care, domiciliary care, and medical services under such title 38 to veterans suffering from substance abuse. In prescribing and implementing regulations pursuant to this subsection, the Secretary of Veterans Affairs shall, from time to time, consult with the Secretary of Health and Human Services in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which they each prescribe.

History

(July 1, 1944, ch 373, Title V, Part D, § 543, as added July 10, 1992, *P.L. 102-321*, Title I, Subtitle C, § 131, *106 Stat. 368*; Nov. 13, 1998, *P.L. 105-392*, Title IV, § 402(c), *112 Stat. 3588*.)

Annotations

Notes

Explanatory notes:

The bracketed words "Under Secretary for Health of the Department of Veterans Affairs" have been inserted in subsec. (h) on the authority of Act Oct. 9, 1992, *P.L. 102-405*, Title III, § 302(a), (e), *106 Stat.*

1984, 1985, which appear as 38 USCS § 305 notes, and which provide that the position of Chief Medical Director of the Department of Veterans Affairs is redesignated as Under Secretary for Health of the Department of Veterans Affairs and that any reference in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Department of Veterans Affairs to the Chief Medical Director of such Department shall be deemed to refer to the Under Secretary for Health of the Department of Veterans Affairs.

A prior § 290dd-2 (Act July 1, 1944, ch 373, Title V, Part D[C], Subpart 1, § 543 [522] [Dec. 31, 1970, *P.L. 91-616*, Title III, Part C, § 321, *84 Stat. 1852*; May 14, 1974, *P.L. 93-282*, Title I, Part D, § 121(a), *88 Stat. 130*; July 26, 1976, *P.L. 94-371*, § 11(a), (b), *90 Stat. 1041*]; April 26, 1983, *P.L. 98-24*, § 2(b)(13), *97 Stat. 181*; July 22, 1987, *P.L. 100-77*, Title VI, Subtitle B, § 611(1), (2), *101 Stat. 516*) was omitted in the general amendment of Part D of Title V of Act July 1, 1944, ch 373, by Act July 10, 1992, *P.L. 102-321*, Title I, Subtitle C, § 131, *106 Stat. 366*. Similar provisions appear as 42 USCS § 290dd-1.

Effective date of section:

This section is effective Oct. 1, 1992, as provided by Act July 10, 1992, *P.L. 102-321*, Title VIII, § 801, *106 Stat. 441*, which appears as 42 USCS § 236 note.

Amendments:

1998 . Act Nov. 13, 1998, in subsec. (e), in paras. (1) and (2), substituted "Uniformed Services" for "Armed Forces".

Other provisions:

Applicability of section. Act July 10, 1992, *P.L. 102-321*, Title VIII, § 801, *106 Stat. 441*, which appears as 42 USCS § 236 note, provides that in the case of certain programs making awards of grants, cooperative agreements, or contracts, the amendments made by such Act (adding this section, among other things; for full classification, consult USCS Tables volumes) are effective for awards made on or after Oct. 1, 1992.

Case Notes

1. Generally
2. Relation to other laws
3. Construction
4. Discovery
5. --Disclosure allowed
6. ----Good cause for disclosure
7. Admissibility of evidence
8. --Suppression warranted
9. Waiver of confidentiality
10. Regulations
11. Remedies
12. Private right of action
13. Miscellaneous

42 CFR 2.11

This document is current through the January 3, 2018 issue of the Federal Register. Pursuant to 82 FR 8346 ("Regulatory Freeze Pending Review"), certain regulations will be delayed pending further review.

See Publisher's Note under affected rules. Title 3 is current through December 31, 2017.

Code of Federal Regulations > TITLE 42 -- PUBLIC HEALTH > CHAPTER I -- PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES > SUBCHAPTER A -- GENERAL PROVISIONS > PART 2--CONFIDENTIALITY OF SUBSTANCE USE DISORDER PATIENT RECORDS > SUBPART B--GENERAL PROVISIONS

§ 2.11 Definitions.

For purposes of the regulations in this part:

Central registry means an organization which obtains from two or more member programs patient identifying information about individuals applying for withdrawal management or maintenance treatment for the purpose of avoiding an individual's concurrent enrollment in more than one treatment program.

Diagnosis means any reference to an individual's substance use disorder or to a condition which is identified as having been caused by that substance use disorder which is made for the purpose of treatment or referral for treatment.

Disclose means to communicate any information identifying a patient as being or having been diagnosed with a substance use disorder, having or having had a substance use disorder, or being or having been referred for treatment of a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person.

Federally assisted --see § 2.12(b).

Informant means an individual:

- (1) Who is a patient or employee of a part 2 program or who becomes a patient or employee of a part 2 program at the request of a law enforcement agency or official; and
- (2) Who at the request of a law enforcement agency or official observes one or more patients or employees of the part 2 program for the purpose of reporting the information obtained to the law enforcement agency or official.

Maintenance treatment means long-term pharmacotherapy for individuals with substance use disorders that reduces the pathological pursuit of reward and/or relief and supports remission of substance use disorder-related symptoms.

Member program means a withdrawal management or maintenance treatment program which reports patient identifying information to a central registry and which is in the same state as that central registry or is in a state that participates in data sharing with the central registry of the program in question.

Minor, as used in the regulations in this part, means an individual who has not attained the age of majority specified in the applicable state law, or if no age of majority is specified in the applicable state law, the age of 18 years.

Part 2 program means a federally assisted program (federally assisted as defined in § 2.12(b) and program as defined in this section). See § 2.12(e)(1) for examples.

Part 2 program director means:

- (1) In the case of a part 2 program that is an individual, that individual.
- (2) In the case of a part 2 program that is an entity, the individual designated as director or managing director, or individual otherwise vested with authority to act as chief executive officer of the part 2 program.

Patient means any individual who has applied for or been given diagnosis, treatment, or referral for treatment for a substance use disorder at a part 2 program. Patient includes any individual who, after arrest on a criminal charge, is identified as an individual with a substance use disorder in order to determine that individual's eligibility to participate in a part 2 program. This definition includes both current and former patients.

Patient identifying information means the name, address, social security number, fingerprints, photograph, or similar information by which the identity of a patient, as defined in this section, can be determined with reasonable accuracy either directly or by reference to other information. The term does not include a number assigned to a patient by a part 2 program, for internal use only by the part 2 program, if that number does not consist of or contain numbers (such as a social security, or driver's license number) that could be used to identify a patient with reasonable accuracy from sources external to the part 2 program.

Person means an individual, partnership, corporation, federal, state or local government agency, or any other legal entity, (also referred to as "individual or entity").

Program means:

- (1) An individual or entity (other than a general medical facility) who holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment; or
- (2) An identified unit within a general medical facility that holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment; or
- (3) Medical personnel or other staff in a general medical facility whose primary function is the provision of substance use disorder diagnosis, treatment, or referral for treatment and who are identified as such providers.

Qualified service organization means an individual or entity who:

- (1) Provides services to a part 2 program, such as data processing, bill collecting, dosage preparation, laboratory analyses, or legal, accounting, population health management, medical staffing, or other professional services, or services to prevent or treat child abuse or neglect, including training on nutrition and child care and individual and group therapy, and
- (2) Has entered into a written agreement with a part 2 program under which that individual or entity:

(i) Acknowledges that in receiving, storing, processing, or otherwise dealing with any patient records from the part 2 program, it is fully bound by the regulations in this part; and

(ii) If necessary, will resist in judicial proceedings any efforts to obtain access to patient identifying information related to substance use disorder diagnosis, treatment, or referral for treatment except as permitted by the regulations in this part.

Records means any information, whether recorded or not, created by, received, or acquired by a part 2 program relating to a patient (e.g., diagnosis, treatment and referral for treatment information, billing information, emails, voice mails, and texts). For the purpose of the regulations in this part, records include both paper and electronic records.

Substance use disorder means a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance-related problems such as impaired control, social impairment, risky use, and pharmacological tolerance and withdrawal. For the purposes of the regulations in this part, this definition does not include tobacco or caffeine use.

Third-party payer means an individual or entity who pays and/or agrees to pay for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of the patient's family or on the basis of the patient's eligibility for federal, state, or local governmental benefits.

Treating provider relationship means that, regardless of whether there has been an actual in-person encounter:

(1) A patient is, agrees to, or is legally required to be diagnosed, evaluated, and/or treated, or agrees to accept consultation, for any condition by an individual or entity, and;

(2) The individual or entity undertakes or agrees to undertake diagnosis, evaluation, and/or treatment of the patient, or consultation with the patient, for any condition.

Treatment means the care of a patient suffering from a substance use disorder, a condition which is identified as having been caused by the substance use disorder, or both, in order to reduce or eliminate the adverse effects upon the patient.

Undercover agent means any federal, state, or local law enforcement agency or official who enrolls in or becomes an employee of a part 2 program for the purpose of investigating a suspected violation of law or who pursues that purpose after enrolling or becoming employed for other purposes.

Withdrawal management means the use of pharmacotherapies to treat or attenuate the problematic signs and symptoms arising when heavy and/or prolonged substance use is reduced or discontinued.

Statutory Authority

INTEROFFICE MEMORANDUM

TO: Laura Smith
Deputy Director, DPHHS

Shannon McDonald
Deputy Chief Legal Counsel, DPHHS

Maurita Johnson
Division Administer, DPHHS

FROM: Mark Prichard, Legal Counsel

DATE: July 17, 2017

RE: **SB 229 Requirement to Disclose Information to Law Enforcement on Drug Exposed Children**

QUESTIONS PRESENTED

1. Should the Child and Family Services Division disclose the results of toxicology reports to law enforcement pursuant to SB 229?

SHORT ANSWER

1. No. SB 229 amended Section 41-3-205 by adding a provision under subsection (4)(c) that requires the Department to “promptly disclose” the results of an investigation to the Attorney General, county attorney, peace officer, the office of the child and family ombudsman, or county interdisciplinary child information and school safety team if there is reasonable cause to believe that a child has been exposed to an illegal drug or drug paraphernalia. SB 229 does not require the release of the toxicology reports or other identifying information from a drug test or treatment which are confidential pursuant to 42 USC 290dd-2.

APPLICABLE STATUTES

Senate Bill 229, (Exhibit A, Attached) amended Section 41-3-205, MCA by adding a provision under subsection 4(c) that requires the Department to disclose the results of an investigation to specified individuals, if a child is exposed to illegal drugs. The amendment reads as follows:

(c) (i) The department shall promptly disclose the results of an investigation to an individual described in subsection (4)(a) or to a county interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the determination that:

(A) there is reasonable cause to suspect that a child has been exposed to a Schedule I or Schedule II drug whose manufacture, sale, or possession is prohibited under state law; or

(B) a child has been exposed to drug paraphernalia used for the manufacture, sale, or possession of a Schedule I or Schedule II drug that is prohibited by state law.

(ii) For the purposes of this subsection (4)(c), exposure occurs when a child is caused or permitted to inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law or have contact with drug paraphernalia as defined in 45-10-101.

The federal “Confidentiality of Alcohol and Drug Abuse Patient Records Act” codified as 42 USC 290-dd-2, restricts the disclosure and use of “[r]ecords of the identity diagnosis, prognosis, or treatment of any patient.” The purpose of the statute and the applicable regulations is to restrict the disclosure of information about individuals in drug and alcohol recovery programs who may be subjected to discrimination for seeking treatment. Pursuant to 42 USC 290-dd-2 the identifying information on individuals may only be disclosed through a valid consent, medical emergencies, for reporting child abuse and neglect, when the individual is a danger to themselves or others, or pursuant to a valid court order. This applies to re-disclosure of the information as well.

DISCUSSION

Senate Bill 229 does not directly conflict with the confidentiality provisions of 42 USC 290-dd-2 as it does not explicitly require the disclosure of the confidential drug and alcohol information to the Attorney General, county attorneys or other law enforcement agencies. The plain language of Senate Bill 229 simply requires that the Department disclose “the results of an investigation” to the individuals listed. The “results” of an investigation is the investigating workers determination or conclusion that a there is reasonable cause to believe that a child has been exposed to illegal drugs or drug paraphernalia. The required disclosure does not include disclosure of the organic health care documents and toxicology reports that support the investigating worker’s determination.

This analysis is supported not just by the plain meaning of the phrase “results of an investigation”, but also by the rules of statutory interpretation that requires that statutes relating to the same issue must be harmonized to give effect to each. When the disclosure requirements in SB 229 is harmonized with the confidentiality provisions in 42 USC 290-dd-2, it is clear that the Department is not required to release the organic health care documents or toxicology reports when they disclose the results of the investigation.

CONCLUSION

Pursuant to SB 229, the Department must disclose the results of an investigation to the county attorney, law enforcement officer or the Child and Family Ombudsman if there is a reasonable cause to believe that a child has been exposed to illegal drugs or drug paraphernalia.

The information that can be disclosed without valid consent or a valid court order is simply the results or conclusion of the investigation. Toxicology reports or other protected health care information that may have been relied upon in determining whether a child has been exposed to drugs or drug paraphernalia cannot be disclosed without either consent or a valid court order. So essentially the investigating worker, or whomever Child and Family Services Division (“CFSD”) designates for the duty, will simply inform the county attorney or local law enforcement officials of their findings and conclusions. It will then be up to the law enforcement to get either a release or a valid court order in order to get the actual toxicology reports or other protected health care information. This includes when a county attorney or law enforcement official request the information pursuant to 41-3-205 (4), MCA, they can receive a copy of the Family Functioning Assessment with the drug and alcohol information redacted.