

## **§19507. Confidentiality of information; representation of individuals with disabilities**

**1. Disclosure of nonidentifiable information.** Authorized agency personnel, in the performance of their duties under section 19505, may disclose information, materials and records that do not contain personally identifiable data.

[PL 1989, c. 837, §1 (NEW).]

**2. Disclosure to subject.** Disclosure of information to a person with mental illness who is the subject of records is subject to this section.

A. Authorized agency personnel may disclose information from the records obtained pursuant to section 19506 to a mentally ill individual who is the subject of the records, except when a mental health professional associated with the organization providing the records, who is responsible for supervising the provision of the mental health services to the individual, notifies the agency in writing that, based on the professional's determination, disclosure would be detrimental to the health of the subject individual. [PL 1989, c. 837, §1 (NEW).]

B. Upon receipt of written notification pursuant to paragraph A, the agency may not disclose information from the records to the subject individual unless another mental health professional has reviewed the records and, based upon the professional's judgment following review, determines that disclosure would not be detrimental to the health of the individual. The reviewing mental health professional must be selected by:

(1) The individual;

(2) The individual's guardian or other legal representative; or

(3) The agency, acting on behalf of an individual whose guardian is the State or an individual whose guardian or other legal representative is not the State, has not selected, within a reasonable time after receipt of notice pursuant to paragraph A, a mental health professional to review the records. [PL 1989, c. 837, §1 (NEW).]

[PL 1989, c. 837, §1 (NEW).]

**3. Disclosure of identifiable information and representation.** Agency personnel may represent persons with disabilities or disclose information, materials and records containing personally identifiable information when one of the following occurs.

A. The person gives consent. [PL 1989, c. 837, §1 (NEW).]

B. The person has been judged incompetent or is a minor, and the individual's guardian or other legal representative gives consent. [PL 1989, c. 837, §1 (NEW).]

C. The person, by reason of a mental or physical condition, is unable to give consent and is without a legal guardian or other representative who may consent on behalf of the individual. [PL 1989, c. 837, §1 (NEW).]

D. The person is under public guardianship and the agency proceeds according to the provisions of subsection 4. [PL 1989, c. 837, §1 (NEW).]

E. The surrogate parent of a developmentally disabled or learning disabled minor authorizes the agency to represent the person in, or to disclose information regarding, special education matters governed by Title 20-A, chapter 303, subchapter I, or 20 United States Code, Sections 1401 to 1485. [PL 1989, c. 837, §1 (NEW).]

F. The person has a legal guardian, conservator or other legal representative and:

(1) The legal guardian, conservator or legal representative has been contacted by the agency upon receipt of the name and address of the legal guardian, conservator or legal representative;

(2) The agency has offered assistance to the legal guardian, conservator or legal representative to resolve the situation; and

(3) The legal guardian, conservator or legal representative has failed or refused to act on behalf of the person. [PL 2001, c. 357, §15 (NEW).]

G. The person is deceased or the person's whereabouts are unknown. [PL 2001, c. 357, §15 (NEW).]

[PL 2001, c. 357, §15 (AMD).]

**4. Public guardians.** Before the agency represents or discloses personally identifiable information pertaining to a person with a disability who is under public guardianship, the agency and the public guardian shall adhere to the following procedures.

A. The agency shall give the public guardian written notice of its intent to represent or disclose personally identifiable information pertaining to a person with a disability who is under public guardianship. [PL 1989, c. 837, §1 (NEW).]

B. After giving notice pursuant to paragraph A, the agency may represent the person or disclose the information unless, within 5 working days, the public guardian gives to the agency written notice of its objections. [PL 1989, c. 837, §1 (NEW).]

C. The objections of the public guardian to the agency's representation or disclosure may only be based upon the public guardian's belief that the actions of the agency would be detrimental to the person's interests. The written notice must state the public guardian's basis for that belief and the case name, docket number and court that established the public guardianship. [PL 1989, c. 837, §1 (NEW).]

D. If the public guardian established under Title 18-C, Article 5, objects under paragraph B, the agency may petition the Probate Court that established the guardianship for permission to represent the person. [PL 2017, c. 402, Pt. C, §17 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. If the person is a child for whom the Department of Health and Human Services has been granted custody under Title 22, section 4034, 4035 or 4038, the agency may petition the court that granted custody for permission to represent the child. The agency must provide notice of the petition to the department at the same time the petition is filed with the court but need not provide notice to other parties to the original protective proceeding. The petition must be granted unless the Department of Health and Human Services demonstrates that representation by the agency would be detrimental to the child's interest. The court shall issue an order approving or denying the petition within 10 days of the filing of the petition. [PL 1989, c. 837, §1 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

F. In cases of emergency requiring immediate agency representation in judicial or administrative proceedings, the agency need not await the public guardian's response to its notice of intent to represent. In these instances the public guardian may raise objections in the proceedings in which the agency represents the person with disabilities. [PL 1989, c. 837, §1 (NEW).]

G. The agency and state agencies acting as public guardians shall, within 6 months of April 17, 1990, enter into cooperative agreements, in writing, describing how this subsection will be implemented. [RR 1997, c. 2, §24 (COR).]

[PL 2017, c. 402, Pt. C, §17 (AMD); PL 2017, c. 402, Pt. F, §1 (AFF).]

#### SECTION HISTORY

PL 1989, c. 837, §1 (NEW). RR 1997, c. 2, §24 (COR). PL 2001, c. 357, §15 (AMD). PL 2003, c. 689, §B6 (REV). PL 2017, c. 402, Pt. C, §17 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

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