

**420 Data Privacy Policy**

Section	Initiated	Last Update	Last Review	Related Procedure/Form	Page
Program	November 2022		November 2022	<a href="#">See Appendix</a>	1 of 3

**Purpose:**

To establish guidelines for data privacy at ProAct.

**Scope:**

All Staff

**Policy:**

ProAct recognizes the right of each participant to confidentiality and data privacy. This policy provides general guidelines and principles for safeguarding participants rights to data privacy under section [245D.04](#), subdivision 3(a) and access to their records under section [245D.095](#), subdivision 4, of the 245D Home and Community-based Services Standards. ProAct will adhere to the Minnesota Data Practices Act and HIPAA in collecting, storing, dissemination and destruction of all data regarding participants.

**Private Data**

- Private data includes all information on participants that has been gathered by ProAct or from other sources for program purposes as contained in an individual data file, including their presence and status in this program.
- Data is private if it is about individuals and is classified as private by state or federal law. Only the following persons are permitted access to private data:
  - The individual who is the subject of the data or a legal representative.
  - Anyone to whom the individual gives signed consent to view the data.
  - Employees of the welfare system whose work assignments reasonably require access to the data. This includes staff persons at ProAct.
  - Anyone the law says can view the data.
  - Data collected within the welfare system about individuals are considered welfare data. Welfare data is private data on individuals, including medical and/or health data. Agencies in the welfare system include but are not limited to: Department of Human Services; local social services agencies, including a participant’s case manager; county welfare agencies; human services boards; the Office of Ombudsman for Mental Health and Developmental Disabilities; and persons and entities under contract with any of the above agencies; this includes ProAct and other licensed caregivers jointly providing services to the same person.
  - Once informed consent has been obtained from the participant or the legal representative there is no prohibition against sharing welfare data with other persons or entities within the welfare system for the purposes of planning, developing, coordinating, and implementing needed services.
- Data created prior to the death of a participant retains the same legal classification (public, private, confidential) after the participant’s death that it had before the death.

### **Providing Notice**

At the time-of-service initiation, the participant, and his/her legal representative, if any, will be notified of this ProAct's data privacy policy. Staff will document that this information was provided to the participant and/or their legal representative in the individual record.

### **Obtaining Informed Consent or Authorization for Release of Information**

- At the time informed consent is being obtained staff must tell the participant or the legal representative individual the following:
  - why the data is being collected;
  - how the agency intends to use the information;
  - whether the participant may refuse or is legally required to furnish the information;
  - what known consequences may result from either providing or refusing to disclose the information; and with whom the collecting agency is authorized by law to share the data. What the participant can do if they believe the information is incorrect or incomplete;
  - how the participant can see and get copies of the data collected about them; and any other rights that the participant may have regarding the specific type of information collected.
- A proper informed consent or authorization for release of information form must include these factors (unless otherwise prescribed by the HIPAA Standards of Privacy of Individually Identifiable Health Information [45 C.F.R. section 164](#)):
  - be written in plain language;
  - be dated;
  - designate the particular agencies or person(s) who will get the information;
  - specify the information which will be released;
  - indicate the specific agencies or person who will release the information;
  - specify the purposes for which the information will be used immediately and in the future;
  - contain a reasonable expiration date of no more than one year; and
  - specify the consequences for the participant by signing the consent form.
  - Maintain all informed consent documents in the participant's individual record.

### **Staff Access to Private Data**

- This policy applies to all program staff, volunteers, and persons or agencies under contract with ProAct (paid or unpaid).
- Staff persons do not automatically have access to private data about the participants by ProAct or about other staff or agency personnel. Staff persons must have a specific work function need for the information. Private data about participants are available only to ProAct employees whose work assignments reasonably require access to the data; or who are authorized by law to have access to the data.
- Any written or verbal exchanges about a participant's private information by staff with other staff or any other persons will be done in such a way as to preserve confidentiality, protect data privacy, and respect the dignity of the participant whose private data is being shared.

- As a general rule, doubts about the correctness of sharing information should be referred to the supervisor.

#### **Individual access to private data**

Participants or their legal representatives have a right to access and review the individual record.

- A staff person will be present during the review and will make an entry in the participant's progress notes as to the person who accessed the record, date, and time of review, and list any copies made from the record.
- An individual may challenge the accuracy or completeness of information contained in the record. Staff will refer the individual to the grievance policy for lodging a complaint.
- Individuals may request copies of pages in their record.
- No participant, legal representative, staff person, or anyone else may permanently remove or destroy any portion of the participant's record.

#### **Case manager access to private data**

A participant's case manager and the foster care licenser have access to the records of the participant under section 245D.095, subd. 4.

#### **Requesting Information from Other Licensed Caregivers or Primary Health Care Providers**

- Complete the Release of Information Authorization form. Carefully list all the consults, reports or assessments needed, giving specific dates whenever possible. Also, identify the purpose for the request.
- Clearly identify the recipient of information. If information is to be sent to the program's health care consultant or other staff at the program, include Attention: (name of person to receive the information), and the name and address of the program.
- Assure informed consent to share the requested private data with the person or entity has been obtained from the person or the legal representative.
- Keep the document in the participant's record.