

## Confidentiality

- I. Confidential applicant and participant information is any information about an applicant or participant, whether it is obtained from the applicant or participant, another source, or generated as a result of WIC application, certification, or participation, that individually identifies an applicant or participant and/or family member(s). Applicant or participant information is confidential, regardless of the original source and exclusive of previously applicable confidentiality provided in accordance with other Federal, State or local law.
- II. WIC information, whether provided by the participant or observed by WIC staff, is protected under the confidentiality provisions of Section 246.26(d) of the WIC Regulations. Examples of observed information include the time and date a participant or applicant was at the WIC clinic, and any aspect of the appearance or apparent condition of persons attending the WIC clinic.
- III. The use and disclosure of confidential applicant and participant information is restricted to persons directly connected with the administration or enforcement of the WIC Program who have a need to know the information for WIC Program purposes. Disclosure of Confidential WIC information is limited to:
  - a. Persons directly connected with the administration or enforcement of the program, including persons investigating or prosecuting violations in the WIC program under Federal, State or local authority.
    - i. This includes WIC staff and administrators who are responsible for the ongoing conduct of the program operations.
    - ii. It does not include personnel in the State or Local Health Department who do not have ongoing involvement in the operation or management of the program. Thus, this provision excludes operational personnel not certifying and serving WIC applicants/participants and administrators who do not directly supervise WIC staff.
    - iii. WIC staff may not access participant records of those not in their care or for reasons other than the ongoing operations of the program as required by their job duties.
  - b. The Comptroller General of the United States for audit and examination authorized by law.
  - c. The Executive Director of the Utah Department of Health, who is the chief State health officer, has authorized the sharing of confidential WIC information with representatives of the following programs:

- i. Medicaid (including Targeted Case Management),
    - ii. Head Start/Early Head Start,
    - iii. Data Resources Program,
    - iv. Maternal and Infant Health Program/Utah Pregnancy Risk Assessment Monitoring System (PRAMS),
    - v. Tobacco Prevention and Control Program,
    - vi. Baby Your Baby,
    - vii. Home Visiting Program (nursing),
    - viii. Baby Watch Early Intervention Program,
    - ix. Immunizations Program,
    - x. Utah Statewide Immunization Information System (USIIS) (requires reading the USIIS Release Form and signing the electronic signature pad authorizing the release)
  - d. **For foster children only**, representatives of the following programs:
    - i. Division of Child and Family Services (DCFS) (requires the foster parent signing the DCFS Foster Child Release Form)
    - ii. Fostering Healthy Children Program (requires the foster parent signing the DCFS Foster Child Release Form)
- IV. WIC participants are notified that confidential information may be shared with certain programs by signing the Rights and Responsibilities form unless an additional release form is indicated. The State agency has signed MOU agreements with the above listed programs allowing sharing of information only for the purposes of:
  - a. Establishing the eligibility of WIC applicants or participants for the programs that the organization administers;
  - b. Conducting outreach to WIC applicants and participants for such programs;
  - c. Enhancing the health, education, or well-being of WIC applicants or participants who are currently enrolled in such programs, including the reporting of known or suspected child abuse or neglect;
  - d. Streamlining administrative procedures in order to minimize burdens on staff, applicants, or participants in either the receiving program or the WIC Program; and,
  - e. Assessing and evaluating the responsiveness of a State's health system to participants' health care needs and health care outcomes.
- V. If the local agency wishes to share confidential WIC information on a general basis with another program or organization not listed above, the following is required:

- a. The local agency must have a signed MOU agreement with the program or organization with which the information is to be shared. This agreement must include assurances that the information will be used only for the purposes listed above and that the information will not be released to a third party. The local agency must have the approval of the State WIC Program Manager to enter into such an agreement. The State WIC Program Manager will seek approval from the Executive Director of the Utah Department of Health before information may be shared.
  - b. Participant's whose information may be released must sign a release form authorizing the release of information. The local agency may not require participants to sign the release form in order to receive WIC benefits.
- VI. If a signed agreement with the program is not in place, and the local agency wishes to share confidential information on a case by case basis, the participant must sign a release form authorizing disclosure. A signed release form provides the local agency with the documentation necessary to show that particular information was released per the participant's request with his/her approval.
- VII. Participants must be informed at each certification visit or when placed on a wait list that the WIC clinic may contact them. This notification is found on the Rights and Responsibilities form. If the participant does not wish to be called or sent mail, document this appropriately in the computer system.
  - a. When leaving a message for a participant, DO NOT specify the participant's name.
- VIII. If the clinic receives a telephone call or in person request asking whether a participant is in the clinic, the staff member should take a name and telephone number and let the caller know that if the person is in the clinic, the message will be delivered. Information should not be given acknowledging the person is in the WIC clinic.
- IX. Participant information may not be released to WIC vendors.
- X. Vendor information (whether it is obtained from the vendor or another source) that identifies the vendor, other than the vendor's name, address, telephone number, Web Site-e-mail address, store type, and authorization status is also confidential.
  - a. Restricted information on a vendor may only be released to:

- i. Persons directly connected with the administration of enforcement of the WIC Program or the Food Stamps Program.
  - ii. Persons directly connected with the administration or enforcement of any Federal or State law.
  - iii. A vendor that is subject to an adverse action.
- XI. Participant records are confidential and clinic staff must protect them from unauthorized access within the VISION system (See System Security).
- XII. Volunteers are considered part of the WIC Program. They may have access to participant information if required by their job assignment.
  - a. Exercise discretion in screening and selecting capable volunteers who would have access to confidential information.
  - b. If a potential volunteer does not appear to be a good candidate for keeping information confidential, there may be other activities that the person can perform that would not include access to participant information.
  - c. All volunteers must sign an agreement to protect the confidentiality of information. By signing an agreement, the volunteer would agree to keep information confidential or forfeit the volunteer assignment.
- XIII. WIC participants or applicants have the right to access all information provided by the participant or applicant, assuming that any issues regarding custody or guardianship have been settled. This includes WIC participants or applicants who request to see his or her own record, or a parent or guardian requesting access to a child's record. The local agency need not grant the participant or guardian access to any other information in the file or record, such as documentation of income provided by the third parties or any information which serves as a staff assessment of the participant's condition or behavior, unless required by State or local law or policy.
- XIV. When WIC records are requested in cases of custody from an individual other than the applicant/participant, or from an organization not covered by an information sharing agreement, it is recommended that local WIC agencies consult with their legal counsel. The attorney can then decide who the appropriate individual to sign a release is, and what procedures to follow with respect to the request.
- XV. State and local agencies are required by law to cooperate with FNS in completing authorized studies.
- XVI. Subpoenas and Search Warrants. A subpoena should never be ignored. Failure to respond to a subpoena could result in the State or local agency

being found in contempt of court. This could result in the incarceration of or fines against WIC employees. The State or local agency may disclose confidential applicant, participant, or vendor information pursuant to a valid subpoena or search warrant in accordance with the following procedures:

- a. In determining how to respond to a subpoena duces tecum (i.e., a subpoena for documents) or other subpoena for confidential information, the State or local agency must use the following procedures:
  - i. Upon receiving the subpoena, immediately notify the State agency;
  - ii. Consult with legal counsel for the State or local agency and determine whether the information requested is in fact confidential and prohibited by this section from being used or disclosed as stated in the subpoena;
  - iii. If the State or local agency determines that the information is confidential and prohibited from being used or disclosed as stated in the subpoena, attempt to quash the subpoena unless the State or local agency determines that disclosing the confidential information is in the best interest of the Program. The determination to disclose confidential information without attempting to quash the subpoena should be made only infrequently; and, if the State or local agency seeks to quash the subpoena or decides that disclosing the confidential information is in the best interest of the Program, inform the court or the receiving party that this information is confidential and seek to limit the disclosure by:
    1. Providing only the specific information requested in the subpoena and no other information; and,
    2. Limiting to the greatest extent possible the public access to the confidential information disclosed.
- b. In responding to a search warrant for confidential information, the State or local agency must use the following procedures:
  - i. Upon receiving the search warrant, immediately notify the State agency;
  - ii. Immediately notify legal counsel for the State or local agency;
  - iii. Comply with the search warrant; and,
  - iv. Inform the individual(s) serving the search warrant that the information being sought is confidential and seek to limit the disclosure by:
    1. Providing only the specific information requested in the search warrant and no other information; and
    2. Limiting to the greatest extent possible the public access to the confidential information disclosed.

- XVII. State law requires the reporting of known or suspected child abuse or neglect. WIC staff must release this information to the Department of Human Services, Child and Family Services (DCFS). The DCFS Child Abuse Intake Hotline can be reached at 1-800-678-9399. In addition, it is recommended that WIC clinics follow local agency policy for reporting suspected child abuse.
- XVIII. The confidentiality provision does not prohibit the release of information if the information is released in a way that protects the identity of the individuals. Requests for data in aggregate or summary form may be granted, as long as the released information excludes any items which would identify program participants or applicants.