

## Confidentiality

- I. Local agencies must reasonably provide a WIC clinic environment where confidentiality is protected, including information discussed between staff and applicants/participants. Information such as identity, residency, income and protected health information should only be discussed in a private setting or in an area in the clinic where other participants or members of the public would not easily be able to hear conversations held at normal voice volume. This may be accomplished through methods such as use of a private room, privacy barriers, or ensuring sufficient distance between others who are in clinic waiting areas, etc.
- II. 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.
- III. WIC information, whether provided by the participant or observed by WIC staff, is protected. 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.
- IV. 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.
- iv. The United States Department of Agriculture Office of the Inspector General (USDA OIG) is authorized to receive WIC information as it conducts enforcement of the program.
  - 1. The state agency should verify the investigators credentials prior to releasing any information.
- 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 and Human Services, 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), including Nurse Family Partnership
  - viii. Baby Watch Early Intervention Program,
  - ix. Immunizations Program,
  - x. Utah Early Childhood Integrated Data System (ECIDS)
  - xi. U.S. Census Bureau
  - xii. Utah Data Research Center (UDRC)
  - xiii. Early Hearing Detection and Intervention Program (EHDI)
  - xiv. 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)
  - ii. Fostering Healthy Children Program
  - iii. Once the foster child is no longer in foster care, information should not be shared with DCFS without the parent signing a release.
- V. 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.
- VI. The Rights and Responsibilities states that, "You may ask WIC staff for more information about these programs." The Utah WIC Program *Information Sharing* document, which is posted on SharePoint provides a list and description of programs with which the WIC program has agreements to share information. This document must be offered to each WIC applicant at certification OR must be posted in a conspicuous location in a public area of the WIC clinic. Please print copies from SharePoint and hand them out upon request.
- VII. 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 and Human Services 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.

- VIII. 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.
  - a. Though WIC participants often give verbal permission to share information with their healthcare provider, which is documented in VISION, federal regulations require that a release be signed by the participant prior to the WIC clinic sharing any confidential information.
- IX. 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.
- X. State and local agencies are required by law to cooperate with FNS in completing authorized studies.
  - a. WIC participants may be asked to voluntarily participate in FNS surveys or studies.
  - b. WIC clinics must post the USDA Study Notice Flyer in a conspicuous location.
  - c. If the clinic is notified of a study involving their clients, it is best to verbally explain to participants that they may be contacted and assure them it does not affect their eligibility or immigration status.
- XI. Participants must be informed at each certification visit or when placed on a wait list that the WIC clinic may contact them. This notification/privacy policy 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.
- XII. 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.
- XIII. Confidential participant information may not be released to WIC vendors.

- XIV. 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, website, 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 Supplemental Nutrition Assistance Program (SNAP).
    - 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.
- XV. Participant records are confidential and clinic staff must protect them from unauthorized access within the VISION system (See System Security).
- XVI. 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.
- XVII. 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.
- XVIII. 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.

- XIX. 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.
- XX. State law requires the reporting of known or suspected child abuse or neglect. WIC staff must release this information to the Department of Health & Human Services, Child and Family Services (DCFS). The DCFS Child Abuse Intake Hotline can be reached at 1-855-323-3237.
- a. It is recommended that WIC clinics follow local agency policy for reporting suspected child abuse.
  - b. When clinic staff become aware of a mother who has given birth to an infant and she has other children who have been removed from her custody by the state, staff should report this situation to DCFS so that they can investigate if the sibling may be at risk.
  - c. In a situation where clinic staff encounter couples in which one of the parties is a minor (under 18 years of age) follow these guidelines:
    - i. Children age 13 or under cannot consent to any sexual activity. Minors age 14 and 15 cannot consent to sexual intercourse. If a minor age 15 or under is pregnant or has had a baby, contact DCFS.
    - ii. If the minor is age 16 or 17, and the partner is suspected or known to be seven years or more older, this should be reported to DCFS.
  - d. In order to protect children and also to protect WIC staff from false allegations, staff should never be alone with a child in the clinic.