

Nutrition/Health Volume
Certification Section

Participant Confidentiality (1.01700)

ER# 1.01700

Authority: 2011 7 CFR 246.21(b), 246.25(a)(4), and 246.26(d), 45 CFR 164.103 and 164.105, Missouri State Law, Chapter 210, RSMO - 1988, USPL 104-191, and Local WIC Provider Nutrition Services Contract Scope of Work

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POLICY: The local WIC provider (LWP) shall keep all information about an applicant or participant, obtained from program participants, applicants, 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) as confidential. The LWP shall not disclose individual information to anyone except as provided in this policy.

The LWP shall provide an environment for certification and counseling which maintains confidentiality of applicant and participant information.

The LWP shall take reasonable precautions against spying or theft of records and data equipment containing confidential information. When confidential information is stored on data systems not supplied by the state WIC agency, the LWP shall assure the security is equal to or exceeds that provided by the state agency.

The LWP shall provide information for audit and compliance investigations to the appropriate authorities as required by WIC regulations and policies.

The LWP must report suspected child abuse or neglect, even if the information was obtained as part of WIC services as required by law.

The LWP shall release information from individual WIC participant records to the Missouri Department of Social Services when presented with the "Authorization for Release of Medical /Health Information form" (SS-6).

The LWP shall consult with their legal counsel regarding compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II) and the appropriateness of establishing a hybrid entity status for the WIC services within the agency.

The LWP shall prohibit the use of cameras, digital or film, within common areas of the facility routinely used by WIC participants. This does not apply to images taken by state WIC staff, LWP staff, or contracted photographers creating photographs for official use. When participants or other members of the public are photographed for official use, a signed release from the individual must be obtained first. LWP staff may allow persons accompanying the participant to take photographs of participant or their household when the photographs are taken in a private area away from other participants/applicants/staff.

PROCEDURES:

A. Protecting confidential information.

1. The LWP may only release confidential information to persons directly connected with the WIC program. This would include service providers, management and administrators from the LWP or state agency.
 2. When presented with appropriate documentation and identification, the LWP provides all information for audit and compliance investigations to the appropriate authorities as required by WIC regulations and policies. Examples of appropriate authorities include but not limited to Representatives of USDA, U.S. Office of the Inspector General (OIG) or the U.S. General Accounting Office (GAO).
- B. Providing information.
1. Upon receipt of a request for information regarding individual WIC records from any source not listed above, the LWP shall:
 - a. Require the requester to obtain a signed release specifying the exact information from the adult participant or the parent or guardian of the infant or child participant.
 - b. Compare the signature on the release request to the signature on the participant's most current signature in MOWINS.
 - c. Provide copies of the specific materials requested in a secure manner such that only the requester can access it.
 - d. Scan the signed release of information in the participant's folder in MOWINS.
- C. Complying with a subpoena
1. If the local WIC provider is issued a subpoena for a participant record, the LWP shall **immediately notify the state agency's WIC Director or designee, then** follow these procedures:
 - a. The LWP consults with their legal counsel.
 - b. With legal counsel, the LWP determines if the material requested by the subpoena can be released.
 - c. If the LWP and their legal counsel decide not to release the information, the LWP legal counsel will appear before the court to argue against the release of information requested by the subpoena.
 - d. If the court denies the motion to stop the subpoena and requires the LWP to release the requested information, the legal counsel should:
 - i. Attempt to consider the appropriateness of an appeal of the decision.
 - ii. Ensure information produced is only that which is essential to respond to the subpoena.
 - iii. Attempt to negotiate the extent to which the WIC information actually produced becomes public information (i.e. reviewed in camera by the court, limited entry into the public record).
 - e. If the local WIC provider releases the information requested by the subpoena, legal counsel, acting on behalf of the LWP, should request the parties requesting

the information submit in writing the terms of the release of the subpoenaed information so that all parties are in accord as to the use of the information.

D. Complying with Child Abuse Reporting Laws

1. Child abuse reporting is mandated by Missouri State Law, Chapter 210, RsMO, 1988. The LWP is required to report suspected child abuse or neglect, even if the information was obtained as part of WIC services.
 - a. Copies of the WIC records or information from the participant file can be released only to a representative of the Department of Social Services with a signed “Authorization for Release of Medical /Health Information form” (SS-6) . The LWP keeps all records concerning reports of child abuse or neglect confidential, with limited disclosure as outlined in the law.
 - b. Contact the state WIC office for further guidance when necessary.

E. Complying with a search warrant

1. **When a search warrant is presented, the LWP shall immediately notify the state agency’s WIC Director or designee, then do the following:**
 - a. Assure the individual(s) producing the search warrant is (are) apprised of the confidential nature of WIC information.
 - b. Review the search warrant carefully and provide only the specific information requested in the search warrant and no other information.
 - c. Legal counsel should be notified immediately after the information has been given for the search warrant.
 - d. Scan a copy of the search warrant in the participant folder in MOWINS.

F. Restricting Photography

1. Only state or local agency staff, or contracted photographers, may take photographs for agency use. Contracted photographers must sign a confidentiality agreement form prior to starting work and agree to restrict all images to only WIC uses.
 - a. Photographic releases must be signed by all individuals whose image is to be used. The LWP should consult with its legal counsel for appropriate release forms.
 - b. Computer screens and paper records must not be exposed in a way that allows photographic images to be taken of them.
2. Family or friends may take pictures of members of their own household if given permission by the LWP. LWP staff must assure that the images are taken in a private area, or in such a way as to protect the privacy of others.

G. Guidance: signage and prohibition.

1. LWP shall assure appropriate signage is posted limiting the use of cameras and all photographic images.

H. **Sharing Participant Data with Department of Health and Senior Services (DHSS) Programs**

1. The chief state health officer has authorized WIC to share participant data with DHSS' Bureau of Immunization Assessment and Assurance (BIAA) for non-WIC purposes for the following reasons:
 - a. Establishing the eligibility of WIC applicants or participants for the programs that the organization administers;
 - b. To conduct outreach for programs administered by DHSS;
 - c. To enhance the health, education, and or well-being of WIC applicants and participants currently enrolled in those programs;
 - d. To streamline administrative procedures in order to minimize burdens on participants and staff and;
 - e. To assess and evaluate the State's health system in terms of responsiveness to participants' health needs and health care outcomes.