

# MEMORANDUM OF UNDERSTANDING

## Information Sharing: CONNECT Electronic Referral System

**1. PURPOSE:** This Memorandum of Understanding (MOU) is entered into by and between the various partners and the Montana Department of Public Health and Human Services (DPHHS) who is serving as the current administrator of the CONNECT Electronic Referral System. This MOU is intended to set forth a collective understanding regarding the manner in which information may be permissibly exchanged within CONNECT. The parties to this MOU recognize and acknowledge that the primary goals and missions of CONNECT are as follows:

- Provide communities with a secure, web-based system that allows agencies to send and receive referrals;
- Bring agencies together under a single information sharing agreement (MOU) and Release of Information (ROI);
- Ensure families are connected to the services they need;
- Encourage coordination of care between multiple agencies working with a family;
- Provide data about referral outcomes that help communities improve service delivery.

**2. OBJECTIVE/AGREEMENT:** The parties recognize that each may operate under a variety of different laws, rules and/or regulations pertaining to the confidentiality of information regarding students and/or clients, and that the particular laws, rules and/or regulations that may apply to any one party may not necessarily apply to the other. The attached “Annex A” is intended to identify those various laws, rules and/or regulations for purposes of better informing the parties as to their general requirements and applicability.

In the interest of developing and increasing access to a better coordinated system of community and school-based services, in the interest of better serving their respective clienteles, in the interest of developing new strategies based on data trends, and in the interest of enhancing the legitimate and appropriate flow of necessary information by and between themselves, the parties hereby agree as follows:

- That the “Authorization For Release, Disclosure and Exchange of Information” form attached as “Annex B” is intended to provide a uniform format for the authorization of information sharing by and between the parties on a specific client or specific student basis, and is intended to comply in all respects with the various laws, rules and/or regulations identified on Annex A;
- That they will inform the Referral Coordinator via User Update Form immediately following a staff change that would result in removing or adding a CONNECT user, in order to maintain the security of the system and restrict access to authorized users only;

- That they will endeavor to utilize the authorization form attached as Annex B in as many instances as possible in an effort to reduce or minimize barriers to service and resources, with the understanding that a party may still require the use of different or additional forms in the context of its own service delivery structure;
- That each party will identify a Site Champion whose duties will include, but not be limited to, serving as the direct contact for the Referral Coordinator with respect to information sharing issues and the use of the authorization form attached as Annex B;
- That the parties will not, **except as may otherwise be permitted by law**, exchange information on a specific client or specific student basis in the absence of an executed authorization in the form attached as Annex B or another legally compliant authorization form; and
- That de-identified and/or non-client or student-specific data and information gathered under and/or pertaining to CONNECT may be routinely shared by and between the parties for various purposes, including but not limited to the improvement of coordinated services and measurements of program and intervention outcomes and efficiencies.
- That the CONNECT Coordinator hired and supervised by DPHHS is authorized to conduct such periodic audits of the utilization of the authorization form attached as Annex B;

**3. LEGAL COMPLIANCE / RE-DISCLOSURE:** The parties agree and acknowledge that each and all of them remain individually responsible for complying with the laws, rules and/or regulations that pertain to their specific operations, and that neither this MOU nor any of its specific terms relieves them of those legal obligations. The parties further agree and acknowledge that they will not, **except as may otherwise be permitted by law**, re-disclose any specific client or specific student information that has been provided to them either (A) under the terms of any individual authorization form or (B) through any other channel of communication.

**4. TERM/PARTICIPATION/INITIAL PARTICIPATION:** The term of this MOU shall be from \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_\_\_. The parties shall signify their participation in the MOU through the execution of the form attached as “Annex C”, copies of which will be maintained at the office of the Referral Coordinator. Any party may withdraw their participation in the MOU at any time and for any reason by providing written notice of that withdrawal to the Referral Coordinator.

# ANNEX “A”

## IDENTIFICATION OF CONFIDENTIALITY LAWS,

## RULES, AND REGULATIONS

The following list represents the confidentiality laws, rules and/or regulations that apply to the parties to this Agreement. The parties recognize that the particular laws, rules and/or regulations that may apply to any one party may not necessarily apply to the others.

### **(1) Family Educational Rights and Privacy Act [FERPA]; 20 U.S.C. § 1232g; 34 C.F.R. Part 99**

FERPA is a federal law that protects the privacy of students' "education records," and applies to educational agencies and institutions that receive funds under any program administered by the U.S. Department of Education. Under FERPA, an educational agency or institution may not have a policy or practice of disclosing the education records of students, or personally identifiable information from education records, without a parent or eligible student's (i.e., one who is at least 18 years of age) written consent. FERPA also gives parents and eligible students the right to inspect and review the student's education records and to seek to have them amended in certain circumstances.

The term "education records" is broadly defined to mean those records that are: (1) directly related to a student, and (2) maintained by an educational agency or institution or by a party acting for the agency or institution. In general, it does not include information based on personal knowledge or observation.

There are a number of important exceptions to the written consent requirement, including but not limited to the following:

- Disclosure of pertinent education records to school officials and others with a "legitimate educational interest." In general, a person has a "legitimate educational interest" with regard to a particular student/record if that person (1) performs administrative tasks directly related to the student; (2) performs supervisory or instruction tasks directly related to the student; or (3) performs a service of benefit for the student or student's family such as health care or counseling.
- Disclosure in response to a court order or subpoena
- Disclosure to State and Local Juvenile Justice Officials, in compliance with state law.
- Disclosure in connection with health or safety emergency involving immediate risk of harm.

### **(2) Individuals with Disabilities in Education Act [IDEA]; 20 U.S.C. 1400 et. seq., 34 C.F.R. 562 et seq.**

The Individuals with Disabilities in Education Act [IDEA] is a federal law that more specifically addresses access to and confidentiality of education records of students with disabilities. It

generally covers the same ground as FERPA, but technically affords greater rights of parental access and imposes somewhat more stringent requirements for safeguarding confidentiality.

In terms of confidentiality, the IDEA regulations contain a specific and express recitation of the duty to safeguard the confidentiality of “personally identifiable information,” and that standard of care extends from creation of the records through destruction.

### **(3) Health Insurance Portability and Accountability Act [HIPAA]; 45 C.F.R. Parts 160, 162 and 164**

The Health Insurance Portability and Accountability Act [HIPAA] protects the privacy of an individual’s health information and medical records under certain circumstances, and specifies when an individual’s authorization is required for disclosure of “protected health information” [PHI]. HIPAA applies to (1) health plans; (2) health care clearinghouses; and (3) health care providers that transmit health information in electronic form in connection with a transaction covered by HIPAA.

As a general rule, HIPAA has no application to public school district operations, and almost all medical and immunization records that a school might generate or possess are legally viewed as “education records” under FERPA, not PHI subject to HIPAA (and that is the case even if a school directly employs (or even contracts with) nurses, physicians, psychologists or other health care providers). For non-school health care providers, however, HIPAA is the governing confidentiality structure.

### **(4) Title 50, Chapter 16, Parts 5 and 8, MCA: Health Care Information**

Title 50, Chapter 16, Parts 5 and 8 of the Montana Code contain certain provisions relating to the confidentiality of health care information for **both** (1) entities that **are not** subject to HIPAA [Chapter 5] and (2) entities that **are** subject to HIPAA. For providers that are not otherwise subject to HIPAA, the Title 50 provisions contain stringent confidentiality restrictions that are very similar to (if not more protective than) the HIPAA provisions, including but not limited to written authorization form requirements (50-16-526) and a six-month limitation on the validity of authorization forms (50-16-527). For providers that are otherwise subject to HIPAA, the Title 50 provisions contain added protections for patients in terms of disclosing information in response to litigation discovery requests or other subpoenas.

### **(5) TITLE 42 C.F.R.: Confidentiality of Alcohol and Drug Abuse Patient Records; 42 C.F.R. 2.1 et seq.**

This set of federal regulations imposes restrictions upon the disclosure and use of alcohol and drug abuse patient records that are maintained in connection with the performance of **any** federally assisted alcohol and drug abuse program, including school-based programs. “Records” means any information, whether recorded or not, which is (1) drug or alcohol abuse information and (2) would identify a patient as an alcohol or drug abuser either directly, by reference to other publicly available information, or through verification of such an identification by another person.

The restrictions on disclosure do not apply to communications of information between or among personnel having a need for the information in connection with their duties that arise out of the provision of diagnosis, treatment or referral for treatment of alcohol or drug abuse if the communications are within a program, or between a program and an entity that has direct administrative control over the program.

When they do apply, however, the restrictions prohibit the disclosure and use of such information unless certain circumstances exist, including but not limited written consent by the patient, or a medical emergency. If a minor patient acting alone has the legal capacity to apply for and obtain alcohol and drug abuse treatment, any written consent for the disclosure of information may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement.

#### **(6) State Law Provisions re: FERPA Disclosure**

There are several state law provisions that relate directly to the FERPA exception to the “written consent” requirement that allows for disclosure without prior written consent to “state and local officials and authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute....if the allowed reporting or disclosure concerns the juvenile justice systems and such system’s ability to effectively serve, prior to adjudication, the student whose records are released.”

- Mont. Code Ann. § 20-1-213(5) provides that a “local educational agency...may release student information to the juvenile justice system to assist the system’s ability to effectively serve, **prior to adjudication**, the student whose records are released under [FERPA]...The official to whom the records are disclosed shall certify in writing to the sending official that the information will not, except as provided by law, be disclosed to any other party without prior written consent of the parent of the student...”
- Mont. Code Ann. § 52-2-211(7) provides that when a County Interdisciplinary Child Information team is involved in a proceeding that is held **prior to the adjudication** of a youth in youth court, the Montana school district involved “may release education records to the team” so long as the written agreement that created the team and governs the operation of the team includes a requirement “that the officials and authorities to whom information is disclosed certify in writing to the school district that is releasing the education records that the education records or information will not be disclosed to any other party without the prior written consent of the parents or guardian of the student.”
- Mont. Code Ann. 41-5-215(5) provides that a school district “may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities **pertaining to violations of the Montana Youth Court Act or criminal laws** by the pupil.” The youth court or law enforcement authorities receiving the information are required to “certify in writing to the school

district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian or pupil.”

#### **(7) Title 41, Chapter 1, Part 4, MCA: Minor Consent for Health Services**

Under Title 41, Chapter 1, Part 4 of the Montana Code, minors are given the right to both (1) consent to the provision of health services and (2) control access to protected health care information under certain limited circumstances including a minor who professes or is found to be pregnant or afflicted with any reportable communicable disease, including a sexually transmitted disease, or drug and substance abuse, including alcohol.

Even when the minor exercises the right to consent and/or control access to information, the health professional may inform the parent or guardian under the following circumstances:

- Major surgery or prolonged hospitalization is required, or severe complications are present.
- Failure to inform the parent or guardian would seriously jeopardize the safety and health of the minor patient, younger siblings or the public.
- Informing the parent or guardian would benefit the minor’s physical and mental health and family harmony; or
- The health professional providing treatment desires a third-party commitment to pay for services rendered.

The term “health professional” includes only those persons licensed in Montana as physicians, psychiatrists, psychologists, advanced practice registered nurses, dentists, physician assistants, professional counselors, or social workers.

#### **(8) Title 41, Chapter 5, Parts 1 through 25, MCA: Youth Court Act**

The Youth Court Act establishes numerous structures and confidentiality requirements pertaining to minors and their involvement with the criminal justice system. The changes made by the 2007 Legislature involved the creation of a single statewide juvenile justice system, and the creation of an extensive diversionary program that effectively makes juvenile probation officials, rather than the Youth Court, primarily responsible for addressing juvenile offenses.

The key confidentiality provisions under the Youth Court Act are found in § 41-5-215, MCA:

- Formal youth court records, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts and orders and decrees on file with the clerk of court are public records and are open to the public until the records are sealed, which generally occurs when the youth reaches the age of majority (§§ 215 and 216);

- Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers **ARE NOT PUBLIC RECORDS** – available only to the follows:
  - Youth Court and staff, agencies providing supervision and having legal custody of a youth, other persons by court order, County Attorney, members of a County Interdisciplinary Child Information Team;
- The Youth Court and juvenile probation officials have discretion in some circumstances, and an affirmative obligation in others, to provide notice to public school officials of certain criminal activities engaged in by students who either presently attend that public school or have applied to attend that school; HOWEVER, that notice obligation does not extend to status offenses (i.e, MIP, etc.)

**(9) Title 52, Chapter 2, Part 2: Child Welfare Services**

Title 52, Chapter 2, Part 2 MCA is entitled “Multi-Agency Children’s Services”, and its stated purpose is “. . . to strengthen and improve children's services in Montana by requiring interagency cooperation regarding the provision of services to children.” One of the mechanisms under Title 52, Chapter 2 is the County Interdisciplinary Child Information Team under § 52-2-211, MCA, which can be formed via WRITTEN AGREEMENT amongst the following:

- Youth Court
- County Attorney
- DPHHS
- County Superintendent of Schools
- Sheriff/Chief of Police
- District Superintendents of local public schools;
- Department of Corrections;
- Providers of medical and mental health care

The purpose of the Team and WRITTEN AGREEMENT is to facilitate the exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions and occupations, including but not limited to abused or neglected children, delinquent youth, and youth in need of intervention. Information regarding a child that a team member supplies to other team members or that is disseminated to a team member under other legal authorities<sup>1</sup> MAY NOT be disseminated beyond the team.

As noted above, if the Team is involved in a proceeding held prior to adjudication of a youth in Youth Court, the Team satisfies the requirements of the FERPA provision that allows school

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<sup>1</sup> These legal authorities include § 41-3-205 (DPHHS abuse & neglect investigation information) and § 41-5-215 (Youth Court information).

officials to release education records to juvenile justice authorities without written parental consent. HOWEVER, that disclosure should be accompanied by a written certification that any education records disclosed in that fashion will not be re-disclosed except with written consent or as may be otherwise authorized by law.

(10) Montana Rules of Professional Conduct for Attorneys, Rule 1.6 Confidentiality of Information:

**RULE 1.6 – CONFIDENTIALITY OF INFORMATION**

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to secure legal advice about the lawyer's compliance with these Rules;

(3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(4) to comply with other law or a court order.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

# ANNEX "B"

## AUTHORIZATION FOR RELEASE, DISCLOSURE AND EXCHANGE OF INFORMATION FORM

Name of Participant: \_\_\_\_\_ DOB: \_\_\_\_\_  
Address (city/state/zip): \_\_\_\_\_ Phone: \_\_\_\_\_  
Name of Parent/Legal Guardian (if participant is under 18 years old): \_\_\_\_\_

**I hereby request, consent to and authorize the mutual disclosure and exchange of information and records concerning the above-named participant by and between the organizations that I have placed my initials next to below:**

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**The purpose for the disclosure and exchange of information is at my request and to facilitate the delivery of services, including service and care coordination and case management.**

**THE INFORMATION THAT I HEREBY AUTHORIZE FOR RELEASE AND EXCHANGE IS AS FOLLOWS (Please place your initials next to the types of information that you ARE AUTHORIZING for release / exchange):**

_____ Medical	_____ Education	_____ Drug/Alcohol
_____ Mental Health	_____ HIV-Related	_____ Housing
_____ Limited Release (for Legal Services use only) <sup>2</sup>	_____ Other: _____	

<sup>2</sup>Due to the confidentiality regulations for some agencies such as legal services providers operating under specific rules of confidentiality and privilege, it may be recommended by the referring agency that the participant only give a limited release. This limited release means that the referring agency will only share basic information about the participant and the type of issue for which the participant seeks referrals. The participant can then choose to share more information, or sign an unlimited release after they become a client with the new agency.

My consent and authorization to this mutual disclosure and exchange of information and records is being granted with the following understandings on my part:

- That this consent and authorization is not valid without the required signature below;
- That my consent and authorization is being provided voluntarily, and that it will expire no later than **one year** from the date below unless I revoke it in writing prior to that time;
- That I have the right to revoke or modify this authorization at any time in writing, except to the extent that information may have already been disclosed pursuant to this consent and authorization;
- That I have the right to request a copy of this form after I sign it, and may have the right to inspect or copy any information shared or disclosed in accordance with this consent and authorization to the extent allowed for by state and federal law;
- That I may refuse to sign this authorization and that my refusal to sign will not affect my ability to obtain treatment from at least certain of the providers outlined above. I also understand, however, that there may be consequences attendant to a decision on my part to not authorize the disclosure and sharing of information, i.e., that at least some of the organizations listed above may not be able to effectively provide services without it;
- That some of the information shared between the organizations listed above may be subject to various state and federal privacy laws, including but not limited to HIPAA, FERPA and/or the alcohol and drug abuse privacy regulations (42 C.F.R. Part 2), and that all of the organizations listed above agree to comply with those regulations to the extent they apply to their respective activities, including but not limited to any restrictions or allowances for the any further disclosure of information shared or provided to them in accordance with this consent and authorization;
- That when certain types of my information are used or disclosed pursuant to this authorization, they may be subject to re-disclosure by the recipient to others without my knowledge or further authorization, in which event applicable privacy laws may no longer protect my information;
- That, to the extent I am authorizing the disclosure of information above that specifically relates to alcohol or drug abuse, the entities to whom such disclosure and sharing has been authorized above ARE PROHIBITED from making any further disclosure of that information to any person or entity outside the group identified above, unless otherwise authorized permitted by 42 C.F.R. Part 2 or they receive express written consent for such further disclosure;

\_\_\_\_\_  
Participant<sup>3</sup> - or Parent/Legal Guardian / Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness

Date: \_\_\_\_\_

Please check applicable box below. If signing on behalf of patient, provide a copy of authorizing document for items marked below with an asterisk (\*).

- Self    Parent of minor child  
 Legal Guardian\*    Power of Attorney\*    Other personal representative\*

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**REVOCATION OF AUTHORIZATION / CONSENT**

I hereby REVOKE the foregoing Authorization and Consent to Disclosure and Exchange of Information in its entirety.

\_\_\_\_\_  
Parent/Legal Guardian/Participant<sup>3</sup> Signature

Date: \_\_\_\_\_

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<sup>3</sup> Minors are authorized by Montana law (§ 41-1-401, et seq., MCA) to both (1) consent to the provision of health care services and (2) control access to protected health care information under certain limited circumstances (i.e., pregnancy, sexually transmitted disease, or substance and alcohol abuse). Any utilization of this form based on the signature of a minor student should be carefully reviewed by the agency to ensure such circumstances are applicable.

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# ANNEX "C"

## PARTICIPATION ACKNOWLEDGEMENT MOU RE: INFORMATION SHARING

The following agency/entity hereby acknowledges its participation in and agreement with the terms of the August 2019 "Memorandum of Understanding Re: Information Sharing":

AGENCY/ENTITY:

\_\_\_\_\_

ADDRESS

\_\_\_\_\_

CITY, STATE, ZIP

\_\_\_\_\_

DATE:

\_\_\_\_\_

AUTHORIZING OFFICIAL:

\_\_\_\_\_ Print Name

\_\_\_\_\_ Signature

\_\_\_\_\_ Title

TELEPHONE NUMBER:

\_\_\_\_\_

E-MAIL:

\_\_\_\_\_