

# WASHINGTON STATE WIC

## POLICY AND PROCEDURE MANUAL



### VOLUME 1, CHAPTER 25

#### Legal Considerations and Confidentiality

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### **Introduction**

This chapter describes some legal issues that WIC clinics occasionally encounter.

Legal issues may come up in many ways. For example, the WIC Program must assure that client records contain accurate and appropriate information because it is the record of the agency's action if there is a dispute. Family members of a child or infant may disagree about who should take charge of the child's care; staff must be able to ascertain the proper caregiver and who may have access to client records. Confidentiality of WIC records may present some legal challenges because state and federal laws require the WIC Program to keep client information confidential in most circumstances, yet health professionals or public agencies must disclose information to a recipient with legal right to the records, including court ordered search warrants.

Other chapters of this policy and procedure manual use the word "caregiver" to refer to any person seeking WIC services on behalf of a child. This chapter distinguishes between "custodians" and "caregivers" because only custodians have legal authority over a child. A caregiver, on the other hand, can be someone who doesn't have legal control of a child. See the definitions below, the policy "[Custody and Custodians](#)" and the Appendix.

**Note:** This chapter is not legal advice. Agencies, as independent contractors, should rely on the advice of their own legal counsel, though agencies must notify the state WIC staff if a potential legal dispute arises.

Some of the important laws or regulations about the maintenance and confidentiality of WIC client records include:

[7 Code of Federal Regulation \(CFR\) 246 WIC Program federal regulations](#). 7 CFR 246.26 (d) and (h) are the provisions for applicant and client confidentiality.

Chapter 70.02 Revised Code of Washington (RCW) Medical records — health care information access and disclosure. This act pertains to information put in the WIC record by a licensed health care provider such as a doctor or nurse.

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.02>

Chapter 42.56 RCW Public Records Act. This act pertains to all records, confidential or not, kept by a public agency in Washington state.

<http://apps.leg.wa.gov/RCW/default.aspx?cite=42.56&full=true>

Chapter 26.44 RCW Abuse of Children. This act imposes a duty on certain professionals to report abuse or neglect of children to proper law enforcement agencies.

<http://apps.leg.wa.gov/rcw/default.aspx?cite=26.44&full=true>

### **Definitions**

**Alternate or alternate caregiver:** Either (1) a person with permission from a child’s custodian to present the child at a WIC clinic and receive WIC services for the child or (2) a second custodian, if the child has more than one custodian. Staff list this person as the alternate in Client Services and on checks.

**Benefits:** All WIC services including, but not limited to, health assessment, education, breast pumps, referrals, and WIC checks.

**Breach of confidentiality:** Any intentional or unintentional disclosure or loss, or suspected disclosure or loss, of any client information not authorized by the client or custodian, or the law.

**Caregiver:** The primary person seeking WIC services on a child’s behalf. A caregiver can be either a:

- Custodian of a child client
- Person authorized by the custodian (typically a relative or friend)
- Person acting in absence of the custodian when the custodian is not available to designate a caregiver

**Client:** Any woman, infant, or child applying for or receiving WIC benefits.

**Client information:** Any information gathered about the client contained in the client record, including but not limited to:

- whether or not the client is on the WIC program
- information obtained from the client, custodian or caregiver
- information obtained from another source
- information observed by staff
- information generated as a result of WIC services
- All forms used in service to the client for example, WIC/Medicaid Nutrition form, Prescription forms, Release of Information form, etc.

**Confidential client information:** Any information about a client that individually identifies a client or family member.

**Confidentiality:** To hold in trust; private, secret. This is a legal duty to safeguard client information.

**Custodian:** The person with legal responsibility for the care, control, and maintenance of a child. “Guardian” is another term often used for custodian, although we don’t use “guardian” in this chapter because there is another term, “guardian ad litem” that is confusing. A guardian ad litem (see definition below) is not a custodian.

Custodians can be:

- one parent
- both parents
- a third party appointed by a court

See “[Custody and Custodians](#)” policy this chapter.

**Client record:** Client record and WIC record are the same thing. In other sections of the WIC Policy and Procedure manual the words “client file” are used. In this chapter we use “client record” to be consistent with language around public records disclosure and subpoenas.

**Days:** In this chapter, “days” means calendar days unless otherwise specified.

**Disclose or disclosure:** Sharing of any information, whether verbal or written. For example, release of public records in response to a properly made request under the [Public Records Act, Chapter 42.56 RCW](#).

**Guardian:** See “Custodian.”

**Guardian ad litem:** A person appointed by a court to represent the interests of a child, usually in custody disputes or dependency matters. See the “[Custody and Custodians](#)” and “[Disclosing Confidential Client Information to Persons Other than the Client or Custodian](#)” policies in this chapter.

**Health care information:** Any information, whether verbal or written, in any form or medium, that identifies or can readily be associated with the identity of a client or family members and directly relates to the client’s health status. This manual considers health care information to be the same as a medical record; see also “Medical record” definition. A client’s WIC record contains information that is not medical/health care information. The medical/health care information record does not include information about the WIC processes that are non-medical; income determination, household size, check cashing issuance and history.

**Mandatory reporter:** [7 CFR 246.26\(d\)\(3\)](#) allows staff required by law to report child abuse and neglect to disclose confidential client information to the extent necessary to comply with law. [RCW 26.44.030](#) lists mandatory reporters. The list includes, but is not limited to, registered or licensed nurses and social service counselors who are engaged in a professional capacity to encourage or promote the health and welfare of children or provide social services to adults. The State WIC Program interprets the term, “social service counselor” in the mandatory reporter statute to include any WIC staff who directly advise clients on securing or using WIC benefits. The determination of who is a mandatory reporter, however, is the responsibility of the local agency.

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## CHAPTER 25 LEGAL CONSIDERATIONS AND CONFIDENTIALITY

### Section 1 Introduction and Definitions

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**Medical record:** For the purposes of this manual, medical record means the same as “Health care information” and includes all information pertaining to the health of the client such as risk assessment, prescription forms, anthropometrics, hematology results and staff notes. See also “Health care information” definition.

**Public record:** Any record conforming to the meaning of public records under the [Public Records Act, Chapter 42.56 RCW](#).

**Redact:** To edit a written document so confidential information cannot be read, usually by covering the section to be kept secret with thick black ink. Examples of information to redact when releasing a specific client’s record may include all retailer information, Specifically Protected Information (unless within the scope of the [client’s written authorization for release](#)) and information about other family members.

**Specifically Protected Information:** Information specifically protected by law other than WIC regulations and requiring a separate, specific authorization before releasing the information to anyone other than the client. The information includes, but is not limited to, a client’s status with regard to:

- Sexually transmitted diseases (see [RCW 70.02.220](#))
- Diagnosis and treatment of mental illness (see [RCW 70.02.230](#))
- Drug or alcohol treatment (see [RCW 70.96A.150](#))

**Note:** “Specifically Protected Information” does not include a client’s self-report that she uses or abuses drugs or alcohol or that she is mentally ill.

**Staff:** For the purposes of this chapter, “staff” includes employees, volunteers, researchers and students working for or in WIC, or other staff in the agency who have legitimate access to WIC client records, e.g. administrators, clerks, medical record staff.

**Written release:** A form or note the client or custodian signs in order to release individual client information. The form can be one generated by the WIC agency, or it can be one generated by a different agency/provider. The written release may also be a signed note from the client or caregiver.



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## CHAPTER 25 LEGAL CONSIDERATIONS AND CONFIDENTIALITY

### Section 2 Client Communication

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#### **POLICY: Assure Client Confidentiality at the Time of Providing Services**

Staff must:

- Provide WIC services and operate clinics in a way that assures confidentiality. This means communicating in a way that protects confidential information, regardless of whether verbal or written communication is in-person, by phone, text, email, fax, video conferencing, or through the sharing of electronic or hard copy records.
- Consult with each other about clients only on a “need to know” basis. See the Policy: “[Disclosing Information for WIC Purposes](#)” in this chapter for more details.
- Conduct all interviews, whether gathering information about health, income or other confidential information, whenever possible, in private rooms with doors closed. If private rooms with doors aren’t available, staff must conduct interviews as quietly and privately as possible.
- Sign an annual confidentiality statement in which they affirm their understanding of the need for confidentiality and promise to keep client records confidential. See the Appendix for an example of a confidentiality statement.

**Note:** Agencies may use the same [confidentiality statement](#) in the Appendix to this chapter or create their own which contains the same elements as the confidentiality statement in the Appendix.

- Staff may provide client information to others outside the clinic only if providing the information is consistent with the policies in [Section 7: “Disclosure of Confidential Client Information”](#) of this chapter.

#### **PROCEDURE:**

Staff:

- A. At the time of hire or time they start their work in WIC, review the confidentiality policies in this manual and any additional practices adopted by the agency.
- B. Annually review and sign the confidentiality policies.
  - Keep these documents in the agency training file.

**POLICY: Client Consent to be Contacted by Clinic Staff**

Staff must obtain and document a client's consent before communicating with the client by means other than in person. This includes communication via phone, letter, email, texting or social media (for example, Facebook messaging).

**Note:** The state WIC staff may contact clients at any time by phone or mail for compliance and clinic quality assurance purposes.

If a client hasn't provided consent to be contacted, staff may call or send a letter if an urgent need for contacting the client arises and the matter can't wait until the next appointment.

**PROCEDURE:**

Staff:

- A. Inform the client about the methods staff have available for contacting clients.
- B. Ask the client about the preferred methods of contact.
- C. Complete the [Client Contact Consent form](#) (see Appendix for example) and document in Client Services. File the form.
- D. Use the client contact consent form in the Appendix or one developed by the agency that includes at minimum:
  1. Client name
  2. Client contact information
  3. The methods the client agrees WIC staff can contact them.
  4. Reasons why staff might contact the client.
  5. Request to inform WIC staff if the client chooses to opt out of or change any of the ways they agreed staff can contact them.
  6. The client's responsibility for any associated data charges.
  7. Client signature
  8. Consent date
- E. Keep the signed consent form in the clinic file.

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### Section 2 Client Communication

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#### **Information:**

- An example [Client Contact Consent form](#) is in the Appendix of this chapter.
- Staff should follow any additional agency policies about contacting clients.

**Note:** Some agencies don't allow staff to reply to incoming text messages in case the message wasn't sent by the client from the client's phone.

**POLICY:    Client Information Must Be Clear and Accurate**

Staff must enter clear and accurate information into client records to:

- Promote effective communication between WIC staff and health professionals
- Document services delivered to the client
- Control the quality of nutrition services
- Establish a record for legal review, if needed

Staff entries in client records must not include irrelevant or extraneous information. For example, staff shouldn't document opinions about a client's or caregiver's demeanor or appearance unless it relates directly to the concerns and services addressed at that visit.

Staff must keep client information that isn't entered into Client Services, such as back-up documentation from another source (prescription forms are an example), in a secure location and in a manner that allows staff to readily find all information relating to a client.

Staff must enter information in Client Services in a consistent manner. When Client Services has multiple fields in which to document information, for example note fields, the local agency has discretion to determine where to enter specific information, but use the same field for the same information for all clients.

**PROCEDURE:**

Staff:

- A. Determine what information is relevant to include in the record.
- B. Document the information in the correct area of Client Services in a consistent manner.
- C. Place outside documents such as prescription forms, notes or records from medical providers, in the agreed upon secure location.

**POLICY:    Correcting, Amending or Adding Statement of Disagreement**

Staff must accept a client's or caregiver's written request to correct, amend, or add a statement of disagreement to the WIC record.

**PROCEDURE:**

Staff:

- A.    Require the request to be in writing, dated, and signed by the requestor.
- B.    Respond to a request in writing within 10 days of receiving it by:
  - 1.    Agreeing to the request.
  - 2.    Denying the request.
  - 3.    Explaining when the requestor will receive a final response if staff needs more time to respond.
- C.    Provide the final response no more than 21 days after receiving the original request.
- D.    If appropriate, make requested correction or amendment as follows:
  - 1.    Keep the challenged entry as part of the record, don't delete it.
    - a.    Client Services doesn't allow staff to delete information entered in the Notes tabs in Client Services after midnight of the day entered.
    - b.    Client Services does allow staff to delete information entered in the Flowsheet notes, but staff shouldn't delete information from the client's record.
  - 2.    Add the amending information following these steps:
    - a.    Enter in all capital letters, "AMENDED NOTE".
    - b.    State which previous entry this amends.
    - c.    Enter the amending information in regular font.
    - d.    Date and initial the change.
- E.    If refusing the request, let the client know that he or she may add a statement of disagreement to the record.

1.    Accept a client's or caregiver's written statement of disagreement.
  2.    Enter a note about the challenged entry.
    - a.    Indicate the client's or caregiver's claims.
    - b.    State where the statement of disagreement is located.
  3.    Date and initial the notation.
- F.    Place the written statement of disagreement in the clinic record.
- G.    Refer the client or caregiver to the person or entity that maintains the record, if it isn't a record maintained by WIC.

**Information:**

Clients and caregivers may want to remove negative observations from the record, such as, negative reports they made about a spouse, domestic violence, or drug and alcohol abuse. Once in the record, such comments become a part of the permanent record that the clinic must maintain.

**POLICY:    Custody and Custodians**

While the person who is the legal custodian of a child controls the child’s WIC benefits, a custodian can designate another person to be a caregiver or an alternate caregiver. See [“Caregivers and Alternates Designated by a Custodian”](#) policy in this chapter.

A child’s mother and father are usually both custodians unless a court has revoked parental rights or a parenting plan establishes one of the parents as a custodian for the purpose of receiving benefits.

- The parenting plan describes how parents will share joint responsibility of the child. The plan often, but not always, designates who has custody of a child when the designation of custody is required for receipt of benefits. If the plan doesn’t designate custody for purpose of benefits, staff can use other legal documents to determine which adult takes control of a child’s WIC benefits.
- See [RCW 26.09](#) for Washington Parenting Act and [RCW 26.26.270](#) about custody for receipt of benefits.

Sometimes a court order gives custodianship for a child to someone other than a parent, or to CPS.

- A court may appoint another person, known as a third party, to be a custodian after the third party has petitioned for custody.
- When a child is in foster care due to a Child Protective Services (CPS) intervention, CPS is the custodian; not the foster parent.
- A court may appoint a guardian with custodial power after a court has found a child to be dependent (abandoned, abused, or neglected) under [Chapter 13.34 RCW](#).
- A child also may have a court appointed guardian with custodial power if both parents have died.

If there is a question or dispute about who is the legal custodian of a child, staff must require proof of custody. If uncertainty remains, staff must consult with state WIC staff.

**Note:** A guardian ad litem is a person appointed by a court to represent the interests of a child and doesn’t have custodial power. A guardian ad litem does have the right to access information about the child, see the [“Disclosing Confidential Client Information to Persons Other Than the Client or Custodian”](#) policy in this chapter.

**PROCEDURE:**

Staff:

- A. Provide a child’s WIC benefits to the legal custodian, a caregiver designated by the custodian, an alternate caregiver designated by the custodian, or a caregiver acting in absence of the custodian.
- See the “[Changes in Custodians and Caregivers](#)” and “[Caregivers and Alternates Designated by a Custodian](#)” policies in this chapter.
- B. Require proof of custody if there is a custody dispute.
1. Require the person claiming custody to present the proper legal documents, such as a court approved parenting plan, a court order for third party custody, or an order for guardianship.
  2. In the case of a parenting plan that doesn’t designate custody:
    - a. Staff can assume that the home where the child or infant lives for most of the time is the proper custodial home.
    - b. If the child spends equal time in each household, the parents must pick which custodian will receive WIC benefits.
  - See the “[WIC Food and Formula Should Follow the Client when an Infant or Child Lives in Multiple Households](#)” policy in this chapter.
  3. Keep a copy in the clinic file of the document identifying the child’s custodian.
- C. If legal documents determining custody aren’t available, staff may contact a professional who is looking after the interests of the child, if any.
- This professional could confirm custody or provide guidance on who is the appropriate caregiver to receive the benefits on behalf of the child.
  - Examples of this type of professional are the client’s designated social worker, case manager, lawyer, public health nurse, or guardian ad litem.
- D. Use discretion to make a decision in the best interests of the child if no legal documents are available and no professional is looking after the interests of the child. This may include:
1. Taking a written, signed, and dated statement from a parent that describes the situation.



2. Taking a written, signed, and dated statement from the person caring for the child that describes the situation (staff can assist the person to write the statement). File the letter in the clinic file.
3. Issuing one month's worth of checks at a time to the apparent caregiver until he or she confirms custody.

**Note:** See the "[Changes in Custodians and Caregivers](#)" policy in this chapter for further actions.

- E. If staff issued checks to a person that afterwards is determined to not have custody and that person still has unused checks, staff must:
1. Ask the person to either destroy or return all unused checks.
    - a. The preferred practice is to return unused checks, but that may not be practical in some circumstances.
    - b. Staff don't need to make contact if the person used all checks issued.
  2. Contact the state WIC staff when the former caregiver won't return unused WIC checks or staff can't reach the former caregiver.
    - Provide the state WIC staff with the check numbers of the original checks.
- F. Document the situation in the client's record.
- G. If a new person who has taken control of the child's WIC benefits, see the "[Changes in Custodians and Caregivers](#)" policy in this chapter for further actions.

**Information:**

1. In some situations, a parent or other person claiming they now have sole custody of the child or are in charge of the child may not have proof.
  - The best practice is to try to contact the previous custodian or caregiver to verify the new claim. This should be done out of the presence of the person with the new claim. If the previous custodian refutes the new claim, staff must rely on the word of the person identified in the client record as the person in charge.
    - The state office doesn't intend for clinic staff to "take sides" in a custody dispute or choose who to believe. Contact the state staff for help if needed.
    - If staff can't contact the previous caregiver, see Procedure D, above.
  
2. There isn't a specific place in Client Services to document information about whether a caregiver is also a custodian. When necessary to document, staff put this information in the agency "agreed upon" place in Client Services.
  - For most clients this won't be an issue; usually it's only when custody is in dispute, or multiple people are trying to get control of the child's WIC benefits that it becomes an issue.
  - It's more important to establish that the caregiver is also the custodian when it comes to authorizing release of information.
  - See the "[A Client or Custodian Release of Confidential Client Information](#)" policy in this chapter.

**POLICY:    Changes in Custodians and Caregivers**

A child's custodian may change when:

1.    Parents divorce and the parenting plan assigns custody to one of the parents for purposes of benefits.
2.    A parent voluntarily or involuntarily loses custody when the court appoints a new guardian or custodian.
3.    Parents die or go missing.
4.    CPS intervenes and becomes custodian when placing the child into foster care (in which case CPS is the new custodian and the foster parent is the caregiver).

A child's caregiver may change when:

1.    The child has a new custodian.
2.    One parent (who is a custodian) has been the child's caregiver, but now the other parent (who is also a custodian) takes primary responsibility for the child's WIC benefits.
3.    A child in the custody of CPS moves from one foster home to another.
4.    The custodian designates another (non-custodian) person to be a caregiver.
5.    The custodian or caregiver isn't present or available and a friend or family member has assumed responsibility for the child's WIC benefits.

Staff may provide the usual WIC services to the new caregiver where it is clear from the circumstances that the new caregiver is a custodian, designated by a custodian or court, or a foster parent.

If the circumstances aren't clear, staff should determine who has custody of the child and whether the child's custodian has designated the person asking for the child's WIC checks as a caregiver.

- See the "[Custody and Custodians](#)" and the "[Caregivers and Alternates Designated by a Custodian](#)" policies in this chapter.

**PROCEDURE:**

Staff:

A.     Confirm that the new person is now the caregiver.

1.     Staff must accept a written statement from a custodian granting authority to the new caregiver. See the “[Caregivers and Alternates Designated by the Custodian](#)” policy in this chapter.

Examples:

- Two custodial but estranged parents agree that the parent not previously designated as the caregiver will take over the role of the primary caregiver of the child for WIC services. Best practice would be to obtain a written statement from the previous caregiver to change the name of the caregiver; however, WIC staff can also take a written statement from the new caregiver or obtain verbal confirmation from the previous caregiver.
  - If the new caregiver is a parent and the primary caregiver is unavailable, for example, jailed, deported, or otherwise disappeared. Staff may attempt to contact the former caregiver at the last phone number, but often are unsuccessful. Staff may accept the written statement of the new caregiver.
  - A custodial parent leaves a child with a relative or friend and designates in writing the person is now the caregiver of the child for WIC services. Staff may provide WIC services to the new caregiver based on a written note signed by the custodial parent.
  - A child is placed in foster care. The custodian is now CPS. Staff must see a written statement from CPS establishing their custodianship of the child, and allowing the foster parent to seek services on the child’s behalf. Staff may provide a one month grace period to the foster parent; that is, they may provide one month of checks if the foster parent doesn’t have the letter establishing that the child is in foster care.
2.     Staff must accept a court order establishing who is responsible for the child to change the caregiver.
  3.     Change the caregiver name on the child’s WIC record.

B.     Provide WIC services, including issuing checks to the new caregiver.

1.     The new caregiver must sign the [Rights and Responsibilities Form](#) agreeing to abide by program rules.

- C.    Contact the former caregiver and request the return of any unused WIC checks, when appropriate.
  - 1.    Contact the state WIC staff when the former caregiver won't return unused WIC checks or staff can reach the former caregiver.
  - 2.    Provide state staff with the check numbers of the original checks.
  
- D.    Document the situation in the client's record.

**POLICY:    Caregivers and Alternates Designated by a Custodian**

Staff must allow a child’s custodian to designate a caregiver or an alternate caregiver to attend WIC appointments and receive WIC services for the child. This policy doesn’t apply to two custodial parents in which one parent is the caregiver and the other parent is the alternate.

When CPS places a child with a foster parent, the foster parent is the caregiver unless CPS directs otherwise. But because only the custodian can designate an alternate, the foster parent doesn’t have the authority to do so. Only the CPS can designate an alternate.

Caregivers and alternates must:

1.     Have permission from the child’s custodian to represent the child.
  - Verbal permission may be acceptable on a temporary basis resulting in monthly check issuance.
  - Ultimately the permission must be in writing.
2.     Bring proper identification documents for the child to be certified.
  - Staff can give a grace period for client identification.
  - See [Volume 1, Chapter 3 - Application and Processing Standards](#).
3.     Know the client’s household gross monthly income and household size.
  - Staff can give a grace period for income documents.
  - See [Volume 1, Chapter 6 – Income](#) for more information.
4.     Know about the child’s health and feeding practices.

**Note:** If the person doesn’t have all of the above, staff must reschedule the certification appointment until the custodian can be present or the caregiver or alternate has the necessary information.

**PROCEDURE:**

Staff:

- A.     Require the authorization for a designated caregiver or alternate to be in writing, dated, and signed by the custodian.

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**CHAPTER 25    LEGAL CONSIDERATIONS AND CONFIDENTIALITY**  
Section 4            Caregiver Issues

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1.    The Caregiver Authorization provided by CPS to a foster parent is adequate for this purpose. Other CPS documents that specify the child is in foster care with this caregiver are also adequate.
  2.    Verbal permission from the custodian over the phone is acceptable for a first time visit.
    - a.    Issue one month of checks until receipt of written authorization.
    - b.    Subsequent visits by the designated caregiver or alternate require written designation from the child’s custodian.
  3.    Staff may use the form in the appendix, or accept other written statements from the custodian. See the [Alternate Caregiver Authorization form](#) in the Appendix.
- B.    Keep the written authorization in the clinic file.
- C.    Complete the certification or other WIC appointments with the designated caregiver or alternate and provide the designated caregiver or alternate with nutrition education, referrals, check education, basic contact, and voter registration that staff provides to the caregiver.
- D.    Require the designated caregiver or alternate to sign the Rights and Responsibilities Form. Follow procedures in [Volume 1, Chapter 7 – Rights and Responsibilities](#).

**Information:**

Follow procedures in [Volume 1, Chapter 22 – WIC Checks](#) when the custodian designates an alternate to only pick up checks.

**POLICY:    WIC Food and Formula Should Follow the Client when an Infant or Child Lives in Multiple Households**

Staff must:

- Issue checks to only one household when an infant or child lives in multiple households.
- Inform the client’s caregivers that they are responsible for assuring the WIC food and formula is in the household where the infant or child is present.

**PROCEDURE:**

Staff:

- A. Issue WIC checks to only one household and encourage that caregiver to share the client’s WIC foods and formula in proportion appropriate to the time the client spends in the other household(s).
- B. Issue the WIC checks to a specific household when a parenting plan establishes that a child will be in one household a majority of time, unless the custodians agree otherwise.



**POLICY:    Security of Client Information**

Staff must maintain client records in a secure location at all times. This includes all hard copy or electronic records such as reports, Farmers Market check registers, peer counseling logs, appointment summaries, and the like. In addition mobile devices containing client information, such as laptops, tablets, cell phone, thumb drives, etc. must be secure.

Maintaining security of client records is important for protecting confidential client information as well as any confidential retailer information that may be in the client record.

**PROCEDURE:**

Staff:

- A.    Protect client records from viewing by unauthorized persons whenever the records are on desks, computer screens, or any other unsecured place.
- B.    Transmit client information or records only if authorized. See policies in the following sections of this chapter for more information:
  - [Section 6: Client's Access to WIC Records](#)
  - [Section 7: Disclosure of Confidential Client Information](#)
- C.    When not in use, secure all mobile equipment. This includes logging out of laptops, tablets, cell phones, etc. and putting them in a locked area, such as in a cabinet, room, or lock box.
  1.    A locked car or car trunk or lock box in a locked car isn't a secure enough location by itself, as cars can be easily stolen or impounded. Staff should take equipment out of a car at night and put in a locked area inside a building.

**Information:**

Local agencies and the State Department of Health may be subject to legal action when client records are lost or compromised. When staff breach confidentiality, clients may feel they can't trust WIC with their personal information and they may not seek WIC services.

**POLICY:    Transmit Information in a Manner that Protects Client Confidentiality**

Staff must use reasonably secure means of transmitting client records to protect confidential information. This includes all methods of sharing information regardless of whether in person or transmitting to another location.

**PROCEDURE:**

Staff:

- A.    Confirm that the client has authorized the disclosure or law otherwise requires or allows its disclosure before transmitting. See policies in the following sections of this chapter for more information:
- [Section 6: Client’s Access to WIC Records](#)
  - [Section 7: Disclosure of Confidential Client Information](#)
- B.    Transmit client information in a confidential manner.
1.    When verbally sharing client information, do it in a private area where others won’t overhear the discussion.
  2.    On all written copies of client records, provide a coversheet that is the same as or substantially like the [transmittal coversheet](#) in the Appendix.
  3.    Minimize use of the client’s name in internal WIC communications; whenever possible use the client ID instead of the name.
  4.    If necessary, redact any parts of the record to which the requestor has no right.
  5.    When possible, give written information directly to the requestor. Enclose the information in an envelope marked “Confidential,” if possible.
  6.    When mailing confidential client information, place the information in an inner, sealed envelope marked “Confidential” before enclosing it in an outer, addressed envelope.
  7.    Don’t email client records.
  8.    When sending faxes:
    - a.    Redact any Specifically Protected Information before faxing. Deliver Specifically Protected Information to the recipient by hand or mail.

- b. Fax client information only when the receiving staff person is present at the fax machine to receive the fax, or the fax machine is in the WIC clinic.
- c. Use a coversheet as described above in B, 2. (See sample [transmittal coversheet](#) in the Appendix).
- d. Confirm that the receiving fax machine is in a secured area accessible only to authorized WIC staff. If it isn't, coordinate so that an authorized person is at the receiving fax machine when the fax arrives.

**Note:** In most circumstances, a clinic may charge a reasonable copying fee when providing information to requestors.

**Information:**

Standard medical records practice discourages faxing client information. A breach of confidentiality may occur if dialing a wrong phone number or the recipient has an unsecured line.

**POLICY:    Report Breach or Suspected Breach of Confidential Client Information**

Staff must report a breach or suspected breach of confidential client information to state WIC staff within one business day.

This duty to report includes, but is not limited to, the following events:

- Someone broke into the WIC clinic; report such events even if staff don't know for certain that the perpetrator looked at any records.
- Someone either stole or lost computer equipment or client records.
- Staff suspects that someone either stole or lost computer equipment or client records.
- Staff suspects that an unauthorized person looked at client records.
- Staff gave information to a client's family member who had no right to the information. See policies in the following sections of this chapter for more information:
  - [Section 6: Client's Access to WIC Records](#)
  - [Section 7: Disclosure of Confidential Client Information](#)
- Staff gave information to non-WIC staff without permission.
  - See [Section 7: Disclosure of Confidential Client Information](#)

**Note:** Giving clients the wrong checks by mistake isn't considered a reportable event.

**PROCEDURE:**

Staff:

- A. Immediately report a breach or suspected breach to the coordinator or lead staff person. The coordinator or lead reports the event to state WIC staff within one business day.
- B. Cooperate with state staff and law enforcement as needed to investigate the breach or suspected breach.
- C. Work with the state staff to notify clients.

**Note:** A client who allows a family member or friend to sit in on interviews and appointments waives the confidentiality of the information shared during the

interview or appointment. Best practice to help protect a clinic from an allegation of breach of confidentiality is to document in the client's record all persons in a room (even children) during a confidential conversation.

**Information:**

Following are examples of breaches or suspected breaches of confidentiality:

- A staff person or contractor places a peer counseling log in the trunk of her car. A thief takes the car.
- A staff person or contractor, who has peer counseling logs in her possession, stops coming to work but doesn't return the logs to the clinic.
- A staff person prints the appointment summary or Farmers Market check register and then misplaces it.

**POLICY: Clients and Custodians have the Right to the Client's WIC Records**

A client or custodian of a client has the right to the WIC record. The request for the record must be in writing.

Staff must:

1. Provide a pregnant, postpartum, and breastfeeding woman receiving WIC benefits, regardless of age, access to her WIC records.
2. Provide custodians of an infant or child access to the client's WIC records.
  - Custodians may be one parent, both parents, or a third party appointed by a court. See the "[Custody and Custodians](#)" policy in this chapter.
  - If one parent has sole custody, the other parent's access to the child's WIC record may be limited to health care information and the information that the noncustodial parent provided to the client's record.
3. Provide notice of when the documents will be available.
  - Staff should provide access to the records as promptly as possible; no more than 5 days after the request is preferred, but no later than 15 days after receiving a client, parent or custodian request.

If custody of an infant or child is in dispute or the client's caregiver has recently changed, staff must first determine who has proper custody in accordance with the policies in this chapter before disclosing the requested records.

- See the "[Custody and Custodians](#)" policy in this chapter.

Both parents have a right to their child's medical records regardless of custody, unless there is a court order prohibiting access by one or both parents (see [RCW 26.10.150](#)).

- A noncustodial parent can look only at any health care information about their children and any nonmedical information the noncustodial parent enters into the record.
- The noncustodial parent can't look at any other information, such as a custodial parent's comments about the noncustodial parent.

**PROCEDURE:**

Staff:

- A. Ask the requester to complete the "[Request for WIC Record](#)" form. (See form in the Appendix.)

- B. Make any information to which a requestor has a right available for examination and, if requested, provide a copy.
1. Provide access or copies of the record within 5 days of the request.
    - a. If the requester asks staff to email the information, you may do so. Explain that email isn't secure unless encrypted; tell the client if your email is encrypted or not. Otherwise provide hard copy via fax or mail.
  2. If unable to meet the 5 day deadline, notify the requestor before the end of the fifth day when the documents will be available.
- Note:** If unable to meet the 5 day deadline, the client or custodian should have access to the record no later than 15 days after the request, unless there is a custody dispute or the like.
- C. If there is a dispute about custody, try to resolve the matter in accordance with the [“Custody and Custodians”](#) policy in this chapter.
- Despite any custody disputes, a noncustodial parent has access to their child's health care information and information that the noncustodial parent has provided to the record - unless there is a court order prohibiting access to the record or revoking the parent's parental rights.
- D. Transmit the information.
1. Follow the [“Transmit Information in a Manner that Protects Client Confidentiality”](#) policy and procedures in this chapter.
  2. This includes redacting any part of the record that the requestor has no right to and providing a cover sheet. (See [sample cover sheet](#) in Appendix.)
- E. Notify requestors when they have no right to the information, and that the clinic won't provide it.
- F. Schedule an appointment to review the information in the record with the requestor, if the requestor wants such a review.
- G. Consult with state WIC staff to assist with any disputes concerning a person's right to a WIC record.
- H. Keep the request and copies of all responses in the clinic file.

**Information:**

Under [WIC federal regulations](#) (7 CFR 246.26(d)(5)), anyone receiving WIC benefits or their parent or custodian has a right to access information that the client, parent, or custodian has provided to the WIC program. Even though federal regulations don't require the state or clinics to provide a client, parent, or custodian access to any other information in the record (such as assessments or information provided by third parties), state policy is to allow access to the full record because this helps to assure accuracy of the record.

**Note:** The parents of a pregnant, postpartum, or breastfeeding WIC client less than 18 years old must have permission from their daughter before having access to the daughter's WIC records, unless the parents have another legal document, such as a court order, authorizing access.

- See the "[A Client or Custodian's Release of Confidential Client Information](#)" policy in this chapter.
- There may be some exceptions to this circumstance; contact state WIC staff if a question arises.



**POLICY: Disclosing Confidential Client Information to Persons Other than the Client or Custodian**

Staff must not disclose confidential client information unless:

1. The client or custodian has agreed in writing to allow release of information to a specific person or entity. A client or custodian may withdraw an authorization to release information. See the following policies in this chapter for more information:
  - [“A Client or Custodian Release of Confidential Client Information”](#)
  - [“Release of Confidential Client Information by a Designated Caregiver or Alternate”](#)
  - [“Honoring a Client or Custodian Authorization Withdrawal”](#)
2. A person directly connected to the WIC Program is receiving the information and needs to know the information for WIC purposes, such as when a client transfers between clinics.
  - See the [“Disclosing Information for WIC Purposes”](#) policy in this chapter.
3. The person receiving the information is auditing the WIC Program or investigating WIC Program violations under Federal, State, or local law.
  - See the [“Disclosing Information for WIC Purposes”](#) policy in this chapter.
4. The entity receiving the information is another program – in the same agency or another public organization – serving persons eligible for the WIC Program. This sharing of information is subject to certain limitations.
  - See the [“Disclosing Information to Other Programs Serving Persons Eligible for the WIC Program”](#) policy in this chapter.
5. Disclosure of the confidential client information is necessary for a staff person to fulfill the duty to report known or suspected child abuse and neglect under [RCW 26.44.030](#).
  - See the [“Comply with the Mandatory Duty to Report Child Abuse and Neglect”](#) policy in this chapter.
6. Disclosure of the confidential client information is in response to a valid subpoena.

- See the “[Object to Subpoenas unless Disclosing Information is in the Client’s Best Interests](#)” policy in this chapter.
7. Disclosure of the confidential client information complies with a valid search warrant.
- See the “[Comply with a Search Warrant](#)” policy in this chapter.
8. The person receiving the information is a guardian ad litem appointed by a court under [RCW 13.34.100](#) to represent and advocate for an infant or child. Under RCW 13.24.100(3), all guardian ad litem have the right to inspect and copy any records relating to a child without consent of the child’s custodian.
- See the “[Minimize Public Access to Client Information if the Client’s Records are under Review in a Legal Proceeding](#)” policy in this chapter.
9. A court has ordered disclosure.
- See the “[Minimize Public Access to Client Information if the Client’s Records are under Review in a Legal Proceeding](#)” policy in this chapter.

Generally, staff must not disclose confidential client information in response to a request under the Public Records Act ([Chapter 42.56 RCW](#)) unless the clinic can disclose it for one of the nine reasons described in the above list. Staff must respond to the public records request even if not disclosing the requested information

- See the “[Respond to Public Records Act Requests](#)” policy in this chapter.

**Note:** Staff may, without a client’s authorization, ask the client’s health care provider about information that the provider has given to the clinic. For example, if staff needs clarification on height and weight, hemoglobin, prescription for formula, etc., staff may call the provider without a release. **Information flowing to the health care provider, however, requires a client release.** For example, if the client requested a special formula, staff must obtain a release from the client before calling the provider to ascertain whether this formula is indicated for the child.

- See the “[A Client or Custodian’s Release of Confidential Client Information](#)” policy in this chapter.

**PROCEDURE:**

Staff:

- A. Release information only according to policy.

**Information:**

Access to certain kinds of information about a client can profoundly affect the client's job status, family relationships and other kinds of interpersonal relationships. Clients have the right to share this information with only those individuals they choose unless the law otherwise requires disclosure. To assure consistent and proper management of confidential client information, the coordinator may want to designate one staff person to be in charge of client information disclosures.

**POLICY: A Client or Custodian Release of Confidential Client Information**

Staff may disclose confidential client information when the client or custodian has signed a written release.

- See the “[Custody and Custodians](#)” policy in this chapter to address questions of who is a custodian.
- A foster parent is not a custodian; permission of the Child Protective Services social worker assigned to the child is necessary to release records when a child is in foster care.

“Written release” may be given via a WIC agency form, another agency or provider’s form, or a signed note from the client or custodian. The written release must contain at a minimum the following elements:

- Client name and date of birth
- The nature of the information to be released
- The name and institutional affiliation of the entity to whom the information is to be released
- The name of the entity who will provide the information
- Signature of client or custodian
- Date of request
- An expiration date or event

Staff can’t disclose information about retailers to persons other than the client or custodian. Staff must redact check cashing history in the client record before releasing records.

Staff must not disclose Specifically Protected Information unless the client or custodian specifically agrees to such a release with a separate signature. (See sample [Individual Authorization to Release WIC Information form](#) in the Appendix.)

Clients and custodians under the age of 18 years can provide written release for the disclosure of their or their children’s confidential client information.

**Information:** [RCW 70.02.030](#) governs patient authorization to disclose health care information.

**PROCEDURE:**

- A. Agency management must provide a standard release form upon request. Staff may copy the form from the [example](#) in the Appendix or agency management may prepare a form with substantially the same information. The form must state:
1. The client or custodian gives permission for the disclosure of her or the child's confidential client information,
  2. Information about sexually transmitted diseases, drug and alcohol diagnosis and treatment and mental health diagnosis and treatment is specially protected and separate signature is needed to release it,
  3. The client or custodian may revoke permission at any time, if the revocation is in writing,
  4. The client's or custodian's refusal to sign the form will not affect WIC benefits,
  5. The name of the agency releasing the information,
  6. The client's name and birth date,
  7. The name of custodian, if applicable,
  8. A date when the permission expires,
    - a. A custodian has the right to set any date they want; however, a typical expiration date would be one year or the end of the certification. It can be longer or shorter however.
  9. The name, address, telephone number and fax number of the person(s) to whom the information is to be disclosed,
  10. The signature of the client or custodian and the date signed,
  11. The signature of translator, if applicable, and
  12. The signature of the clinic staff person transmitting information.
- B. Staff:
1. Either ask the client or custodian to read the release of information form or read the form to the person before asking him or her to sign the form.

**Note:** For non-English speaking persons, a version of the form in the person's primary language is preferred. If such a version isn't available, arrange for a verbal translation of the form; ask both the client or custodian and the translator to sign the English version and document this situation in the client's record.

2. In some cases, an alternate may sign the form, if the alternate is a custodial parent or, if not a custodial parent, the custodian authorized the alternate to sign the form.
3. Keep the original; make a copy of the signed form and give it to the client or custodian.
4. Transmit the information as authorized by the release form in accordance with the "[Transmit Information in a Manner that Protects Client Confidentiality](#)" policy in this chapter.
  - a. Redact any part of the record that the requestor has no right to and provide a cover sheet.
  - b. The staff member transmitting the client's information documents the transmittal by signing and dating the release form.
5. Keep the signed original in the clinic file.

**Note:** Attach the English version to all non-English versions of the form.

**POLICY: Release of Confidential Client Information by a Designated Caregiver or Alternate**

If a caregiver or alternate isn't a custodial parent, the designated caregiver or alternate may sign a release of confidential client information only if the client or custodian has expressly allowed the designated party to do so in writing.

The designated caregiver or alternate's authority to sign of release of Specially Protected Information requires separate and specific written permission to release such information.

**PROCEDURE:**

Staff:

- A. Require the authorization for the alternate to release confidential client information to be in writing, dated, and signed by the client or custodian.
- B. Compare the client or custodian signature with signatures on file.
  1. If there is some concern as to the authenticity of the signature, staff contact the client or custodian prior to releasing information or contact state WIC staff for assistance.
- C. Follow the procedures in the "[A Client or Custodian's Release of Confidential Client Information](#)" policy in this chapter.

**POLICY: Honoring a Client or Custodian Authorization Withdrawal**

Staff must not disclose any information previously authorized for release if the client or custodian gives the clinic a written document withdrawing the authorization to release confidential client information.

**PROCEDURE:**

Staff:

- A. Require a withdrawal to be in writing, dated, and signed by the requestor.
- B. Document the change in authorization status in the client's record.
- C. Attach the withdrawal to the front of the [Authorization for Release of Information form](#) and file in the appropriate location.
- D. Comply with change in authorization status.

**Information:**

Staff should assist the client with writing the withdrawal, if needed.



**POLICY: Disclosing Information for WIC Purposes**

Staff must disclose confidential client information without notice to or permission from the client or custodian if:

- The person receiving the information is directly connected to the administration of the WIC Program and has a need to know the information for WIC purposes. This can be at the local, state or federal level.
- The person receiving the information is auditing the WIC Program or investigating and prosecuting WIC Program violations under local, state or federal law.

**PROCEDURE:**

Staff:

- A. Confirm that the requestor needs the information for WIC purposes, which can include the following:
1. Client transfer to another WIC clinic within the state or out of state.
  2. Administration of some aspect of the WIC Program,
  3. Audit of the WIC Program, and
  4. Investigation of WIC Program violations.

**Note:** Any auditor conducting a general audit of an organization that incidentally administers the WIC Program can't have access to confidential client information. An auditor may review confidential client information only if auditing for WIC purposes.

- B. Verify the person who will receive the information is allowed to per policy.
1. If no one on staff knows the requestor, ask for identification or otherwise verify that the person is whom he or she purports to be by confirming with state WIC staff.
- C. Provide the information requested, transmitting it in accordance with the "[Transmit Information in a Manner that Protects Client Confidentiality](#)" policy in this chapter.
- D. Document the disclosure in the client's record.

**Information:**

A WIC staff member may have a need to exchange information about a client with another WIC staff member for coordination of services, job performance review or training. If such exchanges serve the purpose of improving client care, such exchanges are permissible if both parties take care to protect the confidentiality of the client during and after the conversation. “Venting” or gossiping about a client doesn’t serve the purpose of improving client care.

**POLICY: Disclosing Information to Other Programs Serving Persons Eligible for the WIC Program**

Staff may disclose confidential client information to other programs or organizations that serve persons eligible for the WIC Program. The Agreement may be Intra-agency, that is, between WIC and other program and services within the agency in which WIC resides. The Agreement may be Inter-Agency, that is, between WIC and other programs and services outside the agency in which WIC resides.

All Agreements must be approved by the state office.

The Agreement must:

1. Be with only the following types of programs or services:
  - Head Start/ECAEP Programs
  - Local health jurisdictions
  - Migrant and Community Health Centers
  - Tribal health programs
  - Maternal and child health programs
  - Maternity Support Services/Infant Case Management
  - Health care providers
2. Include:
  - a. How the information will be used, which can be for no purpose other than one or more of the following:
    - Establishing the eligibility of WIC clients for the programs that the non-WIC organization administers.
    - Conducting outreach to WIC clients for the non-WIC organization's programs.
    - Enhancing the health, education or well-being of WIC clients currently enrolled in the other programs, including the reporting of known or suspected child abuse or neglect.
    - Streamlining administrative procedures in order to minimize burdens on staff and clients in both the WIC and non-WIC programs.
    - Assessing and evaluating responsiveness of the State's health system to client's health care needs and health care outcomes.

3. How long the Agreement will be in effect.
  - a. The Agreement may be in effect for a maximum of five years. An Agreement may be renewed more frequently as needed.

In addition to the above, staff must notify the client or custodian in writing that WIC will share the information with the specific programs or organizations.

1. The client or custodian does not have a right of refusal.
2. Staff must provide individual written notification in the appropriate language at each certification.
3. Staff must provide information about how the non-WIC program or organization will protect the confidentiality of the information including assurances that the program won't disclose the information to third parties.

**Note:** The Appendix has two examples of Agreements:

- (1) An Agreement for providing WIC information between two different agencies and,
- (2) An Agreement for providing WIC information to other programs in the same agency.

**PROCEDURE:**

Staff:

- A. Confirm whether the proposed disclosure of confidential client information is consistent with the limitations described above for this policy.
- B. Prepare a written Agreement recording the exchange of information including:
  1. The explanation of how the information will be used.
  2. A confidentiality clause prohibiting further disclosure of the information.
  3. The period of time the Agreement will be in effect up to a maximum of five years.
- C. Ask the authorized representatives for each party to sign and date the Agreement. One person may sign for both programs if the WIC and non-WIC programs are in the same agency and the person signing has binding signature authority for both programs. Send an electronic copy of the signed Agreement to the LPC. The LPC will indicate with approval or not within ten business days.
- D. Notify clients about the sharing of information.

- E. Release the information following the requirements of the policy stated above and in accordance with the “[Transmit Information in a Manner that Protects Client Confidentiality](#)” policy in this chapter.

**Information:**

Health care information disclosed under this policy is also subject to the Washington Uniform Health Care Information Act ([RCW 70.02.050](#)). The more stringent federal rules governing disclosure of WIC information without explicit client consent take priority over the state law.

**POLICY: Object to Subpoenas Unless Disclosing Information is in the Client’s Best Interests**

Staff must notify state WIC staff if receiving a subpoena for client records. In most cases, the proper course of action will be to object to the subpoena. If failing to object to a subpoena, the State or local agency may seek to quash (reject or void, especially by legal procedure) the subpoena.

In some cases, disclosing the information may be in the best interests of the client and, therefore, the State and the local agency won’t object to or seek to quash the subpoena.

Service of a subpoena requires immediate involvement of legal counsel.

**Information:** Subpoenas are a request for information either by an attorney or, in the case of someone who doesn’t have an attorney, the clerk of a court. A subpoena is not a court order to release the information requested; the state or the local clinic can object to releasing the information. [7 CFR 246.26\(i\)\(1\)\(iii\)](#) directs the State or local agency to attempt to quash a subpoena unless the State or local agency determines that disclosing the confidential client information is in the best interests of the Program. The State interprets the “best interests of the Program” to be the best interests of the client. “Quashing a subpoena” means asking a judge to void or terminate the subpoena. Instead of quashing a subpoena, a local agency or the State Office can object to a subpoena [Washington Civil Rule 45\(c\)\(2\)\(B\)](#) without involvement by a judge, but this must be accomplished soon after receiving the subpoena.

**Note:** Clinic staff may suggest to persons intending to serve a subpoena that they serve the State WIC Office instead the local clinic. This is, however, at the discretion of the clinic staff and their own legal counsel.

**PROCEDURE:**

If served with a subpoena, staff:

- A. Immediately notify state WIC staff and, at the discretion of the clinic, the clinic’s own legal counsel. Staff may accept the subpoena from server but must refrain from providing the requested information before consulting with state WIC staff.
  1. The best practice is to contact the state WIC staff as soon as possible, but you must notify the state within one business day.
  2. State staff will consult with the Attorney General’s Office before coordinating next steps with the clinic.

- B. Consult with the state WIC staff to determine if supplying the information is in the best interests of the client. Consultation must take place quickly in order to comply with deadlines for objections or responses.
  
- C. If disclosure doesn't appear to benefit the client, the preferred course of action is to object to the subpoena.
  - 1. Clinic staff should rely on the advice of their own counsel, but state staff will provide guidance and cooperate with the clinic and their counsel in objecting to a subpoena.
  - 2. If clinic staff don't file a timely objection, the next preferred course of action is to seek to quash the subpoena, which will require consultation between the clinic staff and state WIC staff.
  - 3. "Timely" depends on the nature of the subpoena; staff should seek the local agency's legal counsel's guidance.
  
- D. If the disclosure is in the best interest of the client or if the court orders the clinic to disclose the information, release records in accordance with "[Minimize Public Access to Client Records if the Client's Records are under Review in a Legal Proceeding](#)" policy in this chapter.

**Information:**

WIC regulations don't require local agencies to inform clients, at the time of application or afterwards, that the clinic may release WIC information in response to subpoenas.

**POLICY: Comply with a Search Warrant**

Staff must follow the advice of their own legal counsel in responding to search warrants; however, the State recommends complying with the search warrant because staff may be subject to arrest if refusing to comply.

Staff may not disclose client information to law enforcement without a search warrant.

**Note:** There may be emergency situations in which it is in the best interest of the client to provide client information to law enforcement, e.g. a hostage situation or natural disaster. Staff will have to use their judgement at those moments.

**Information:** [7 CFR 246.26\(i\)\(2\)](#) directs the State or local agency in responding to search warrants.

**PROCEDURE:**

Staff:

- A. Direct the person serving the search warrant to the WIC coordinator or lead who is responsible for managing the clinic and is present at the time.
- B. Review the law enforcement officer's identification and warrant carefully (warrants must specify exactly what is sought and the areas to be searched).
- C. Provide only the specific information requested in the warrant and no other information.
- D. Inform the individual(s) producing a search warrant of the confidential nature of WIC information. See the policy "[Minimize Public Access to Client Records if the Client's Records are under Review in a Legal Proceeding](#)" in this chapter.
- E. Keep a copy of the search warrant for the clinic file.
- F. Notify state WIC staff and the clinic's legal counsel that the clinic has been served with a search warrant or if there was an emergency in which client information was provide to law enforcement.
  1. The best practice is to contact the state WIC staff as soon as possible, but you must notify the state within one business day.

**Information:**

WIC regulations don't require local agencies to inform clients, at the time of application or afterwards, that the clinic may release WIC information in response to search warrants.



A subpoena to a clinic doesn't include documents in the sole possession of the state, i.e., documents that the clinic has not retained but are in state records. If the entity issuing a subpoena to the clinic wants records maintained only by the state, then the entity must separately issue a subpoena to the state.

**POLICY: Minimize Public Access to Client Information if the Client’s Records are under Review in a Legal Proceeding**

Staff must attempt to limit public access to client records if used as exhibits in administrative or judicial proceedings. At a minimum, this means notifying the hearings office or court of the confidential nature of the records and releasing only the parts of the records that relate specifically to the dispute under consideration. In some cases, clinic staff or the state WIC staff may seek a protective order.

**Information:** Administrative or judicial review of a legal question concerning WIC clients may lead to an obligation to disclose client records. Federal WIC regulations provide, at least in connection with disclosures under subpoena and search warrant that if obligated by law to release client records, state WIC staff and clinic staff must inform the court that the information is confidential. Next, they must seek to limit disclosure by (1) providing only the specific information requested and (2) limiting to the greatest extent possible public access to the client records. (See [7 CFR 246.26\(i\)](#)). Though public access to the records of juvenile court is generally limited, exhibits filed in other proceedings are public records unless covered by a protective order.

**Note:** Clinic staff may suggest to persons seeking to use client records as exhibits in administrative or judicial proceedings contact the State WIC Office instead of the local clinic. This is, however, at the discretion of the clinic staff and their own legal counsel.

**PROCEDURE:**

If legally obligated to disclose confidential client information, staff:

- A. Notify state WIC staff.
  - 1. The best practice is to contact the state WIC staff as soon as possible, but you must notify the state within one business day.
- B. Provide only the specific information requested and no other information.
- C. Transmit the information as authorized by the release form in accordance with the [“Transmit Information in a Manner that Protects Client Confidentiality”](#) policy in this chapter. This includes redacting any part of the record that the requestor has no right to and providing the confidentiality coversheet.
- D. Cooperate with state WIC staff to determine if any further action, such as moving for a protective order, is necessary.

**POLICY: Respond to Public Records Act Requests**

Staff must notify and coordinate with state WIC staff before responding to requests under the Public Records Act ([Chapter 42.56 RCW](#)) for client records. The most likely response will be to provide the records with all confidential client information redacted, unless staff can release the information for one of the other reason listed in the “[Disclosing Confidential Client Information to Persons Other Than the Client or Custodian](#)” policy in this chapter.

**Note:** The State has no objection to clinic staff suggesting to persons intending to file a public records request that they file it with state WIC staff instead of the local agency. This is, however, at the discretion of the clinic staff and their own legal counsel.

**Information:** The Public Records Act requires any agency in Washington State that is subject to the Public Records Act (see [RCW 42.56.010](#) for definition of agencies subject to the Public Records Act) to make public records available for public inspection or copying unless the record “falls with the specific exemptions of [the Public Records Act] or other statute which exempts or prohibits disclosure of specific information or records.” See [RCW 42.56.070](#). The State interprets [7 CFR 246.26](#) to be an “other statute” prohibiting disclosure of specific information.

If your clinic is subject to the Public Records Act, anytime you use a device such as a smart phone or computer that you personally own to conduct clinic business you are creating a public record subject to disclosure on that device. This is true even if just commenting or posting information to a social media site on behalf of the clinic. You may be obligated to hand over your device in a search for public records.

**PROCEDURE:**

Staff:

- A. Be familiar with and follow their own agency’s public records procedures.
- B. If receiving a public records request, immediately notify state WIC staff if possible, but within two business days. Clinic staff should consult with their own public records staff or legal counsel, as appropriate.
- C. Cooperate with state staff to determine if the person has a right to the requested information for some reason other than the Public Records Act, as described in the “[Disclosing Confidential Client Information to Persons Other Than the Client or Custodian](#)” policy in this chapter.

- D. If the person has a right to the information for some other reason, disclose the information in compliance with the applicable policy while assuring that the clinic meets deadlines for response under the [Public Records Act](#).
1. State staff will assist with this disclosure and response.
- E. If the person doesn't otherwise have a right to the information, prepare a public records disclosure with all confidential client or vendor information redacted.
1. State staff will assist with this disclosure and response.
  2. Comply with deadlines for response under the [Public Records Act](#).

**POLICY: Comply with the Mandatory Duty to Report Child Abuse and Neglect**

Confidentiality is of critical importance in the WIC program but WIC confidentiality provisions should not create barriers to stopping the abuse or neglect of a child.

Clinic staff who are mandatory reporters of child abuse and neglect under state law (see “Mandatory reporter” in the definitions section in this chapter) must report known, suspected or reported child abuse or neglect to Child Protective Services (CPS) or law enforcement. Staff must report abuse or neglect as soon as possible and by law no longer than 48 contiguous hours after becoming aware of the concern.

- Phone number: 800-END-HARM (363-4276)
- Website: <https://www.dshs.wa.gov/ca/child-safety-and-protection/how-report-child-abuse-or-neglect>

Federal confidentiality regulations prevent clinic staff who are not mandatory reporters from reporting directly to CPS or law enforcement. These staff should report any observations or suspicions of child abuse or neglect to clinic management. If clinic management are not mandatory reporters, then they must direct staff to a mandatory reporter.

**PROCEDURE:**

Staff:

- A. Know mandatory reporter duties. For information on who is a mandatory reporter and the reporter’s duties, see <http://www.dshs.wa.gov/ca/safety/abuseReport.asp>.
- B. If a mandatory reporter, verbally report known or suspected child abuse or neglect to CPS, or law enforcement releasing pertinent information. For information on how to report, see <http://www.dshs.wa.gov/ca/safety/abuseReport.asp>.
  1. When reporting to CPS, provide all information about the child or caregiver pertinent to known or suspected abuse. For example, if the caregiver reports previous CPS involvement in another state, let CPS know.
- C. If not a mandatory reporter, verbally report known or suspected child abuse or neglect to clinic management or another mandatory reporter in the clinic, if clinic management isn’t available.
- D. Document the date and time of the report in the client’s record.

**Information:**

Mandatory reporters are subject to misdemeanor charges if they don't report known or suspected child abuse and neglect within 48 hours.

[RCW 26.44.020](#) defines a child as any person under the age of eighteen years.

**POLICY: Cooperate with Child Protective Services and Law Enforcement**

Staff must comply with CPS or law enforcement requests for confidential client information in child abuse or neglect cases in a timely manner. Staff may disclose relevant client records to CPS or a law enforcement agency without the consent of the client. Such disclosures must not include information that doesn't respond to the scope of the request.

Local staff may refer CPS or the law enforcement agency to state WIC staff instead of fulfilling the request at the local level. CPS requests usually ask for receipt of the requested information within five business days. State staff can usually complete the request within one business day.

**Information:** CPS may ask for a range of client information from verification that a caregiver is completing WIC appointments to wanting copies of WIC records to see evidence of neglect such as low weight and other data or observations. Some requests, such as verification that appointments are being kept may take very little time to fulfil, while others, such as requests for the WIC record, make take longer.

Staff must not release records to substantiate allegations of child abuse or neglect to anyone other than CPS or a law enforcement agency, unless served with a subpoena or unless the requestor is a noncustodial parent asking for the child's health records. See the following policies in this chapter:

- [“Clients and Custodians have a Right to the Client’s WIC Records”](#)
- [“Object to Subpoenas unless Disclosing Information is in the Client’s Best Interests”](#)

**PROCEDURE:**

Staff:

- A. Ask CPS staff or any law enforcement staff investigating alleged child abuse or neglect to put in writing any requests for client records. The request should be on CPS or law enforcement letterhead.
  1. If the local agency will fulfill the request, clinic staff contact agency's legal counsel prior to providing any information to the requestor.
    - a. The agency must assess such requests on a case-by-case basis to determine whether staff may legally release client information to CPS without authorization.

- b. Release the records in accordance with the “[Minimize Public Access to Client Records if the Client’s Records are under Review in a Legal Proceeding](#)” policy in this chapter.
  2. If the local agency is referring the request to the state WIC staff, ask CPS or the law enforcement agency to fax the request on letterhead to “Attention CIMS Support” at 360-236-2345.
- B. Whichever agency fulfills the request, the local agency or state WIC office, that agency must document what information was sent and the date and time it was sent in the client’s record.
1. If the state WIC staff fulfill request, they will ask clinic staff to document specific information in the client’s record.



**Appendices**

**Appendix 1: Legal authority of custodians, caregivers, alternates and guardian ad-litem**

	<b>Custodian</b>	<b>A non-custodial parent</b>	<b>A non-custodial caregiver or alternate</b>	<b>Guardian ad-litem</b>
<b>Can apply for WIC services on behalf of a child?</b>	Yes	Yes, but only with the custodial parent's authorization	Yes, but only with custodian's authorization	No
<b>Can designate a different caregiver or alternate?</b>	Yes	No	No	No
<b>Can access the child's WIC health record?</b>	Yes	Yes, but only the health record portion	Yes, but only with custodian's authorization	Yes
<b>Can access the child's entire WIC record?</b>	Yes	No, unless asking for information he or she put in the record	Yes, but only with custodian's authorization	Yes
<b>Can authorize release of child's WIC health record to a third party?</b>	Yes	Yes	Yes, but only with custodian's authorization	No, except as deemed necessary to a court
<b>Can authorize release of the child's entire WIC record to a third party?</b>	Yes except the retailer information	No	Yes, but only with custodian's authorization and except the retailer information	No, except as deemed necessary to a court

### **Appendix 2: Mandatory Times to Contact the State WIC Staff**

While local staff may always contact the state WIC staff for assistance, below are the situations when local staff must notify state WIC staff **within one business day**.

“Notify state WIC staff” means to connect with their Local Program Consultant (LPC) or LATA representative unless noted otherwise.

- Breach or suspected breach of confidential client information
- When served with a subpoena
- When served with a search warrant
- When legally obligated to disclose confidential client information if the client’s records are under review in a legal proceeding
- When checks are being issued to a new caregiver and the previous caregiver has outstanding checks and either can’t be reached or refuses to return the checks
- When receiving a request for information based on the Public Records Disclosure Act

**Appendix 3**

**Sample Confidentiality Statement**

As an employee, volunteer, or student, of \_\_\_\_\_ (agency) \_\_\_\_\_ I understand and agree to follow the policy and procedure of confidentiality. These are in this organization's personnel policy and the Washington State WIC Manual. During and after my time with this agency, I agree to:

1. Keep any information about WIC applicants and clients who call, visit, or have records in this clinic strictly confidential.
2. Treat all client information gathered, maintained, or transmitted electronically as well as paper copies with care and respect to ensure confidentiality is protected.
3. Not discuss client information inside or outside this office unless the client has specifically authorized the transfer of information, the law requires release of information, or I am working with another WIC staff member to provide client care.
4. If there is a release of information, provide to the requester only the information the requester needs.
5. Conduct myself in a manner that protects client confidentiality.
  - A. During discussions about the client's use of WIC services, specifically:
    - a) Handle all information given by clients regarding their personal and medical status in a quiet, private manner;
    - b) Conduct all personal, confidential interviews, whenever possible, in private rooms with doors closed;
  - B. Securing all hard copy or electronic data, and equipment and devices on which those data are stored.
6. Not save any personnel or personal information on internal drive of state-owned electronic equipment.

Return all equipment, resources, and client records (soft or hard copy) before resigning or when employment is terminated.

[Optional] Add agency specific consequences if desired.

I agree that the policy concerning confidentiality has been explained to me. I know how to access the policy and if I have any questions, I can ask my supervisor.

Employee Signature \_\_\_\_\_ Date \_\_\_\_\_

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

Agency Name  
Address  
Phone number

**Appendix 4**

**Client Contact Consent Form**

(Agency name) WIC staff would like your permission to contact you about your appointments.

**Name:** \_\_\_\_\_ **Client ID #:** \_\_\_\_\_

1. I give WIC staff my permission to contact me about appointments the following ways:

- Mail
- Phone
- Text messaging
- Email. If yes, email address is: \_\_\_\_\_
- Facebook (Only private messaging) If yes, name on Facebook account if different
- \_\_\_\_\_
- Other:

2. Signing this form means I understand:

- I am responsible for any costs that my phone company charges for text messages or other data rates.
- WIC staff may contact me about appointments.
- I can contact WIC if I want to change the way staff contact me about appointments.
- Others might view information transmitted to me on my mobile phone or computer.
- WIC staff won't see messages I send after office hours.

Client Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Appendix 5**

**Alternate Caregiver Authorization Form**  
For Check Pick-up, Certification and other WIC appointments

Participant(s) Name(s): \_\_\_\_\_

I, \_\_\_\_\_ authorize

\_\_\_\_\_ to be my representative.

*(Alternate caregiver)*

- They have my authorization to pick up, sign for and cash WIC checks for the client(s) listed above.
- They are aware they need to read and sign the WIC Rights and Responsibility form and receive education on food selection and cashing checks.

(The next section is for custodians of children only)

- They have my authorization to bring the child listed above to certification and other WIC appointments.
- They have knowledge of each child's health and eating patterns.
  - They have knowledge of my monthly income and family size.
  - They are aware that they will be asked for their identification at each appointment.
  - They are aware they may be asked for other documentation such as each child's ID, proof of child's residency, household income, etc.

I agree to provide further information to the person named above about how to select WIC foods, use WIC checks and follow the WIC rules.

I understand that the alternate caregiver named above will remain active for all clients named above until further notice. I will notify the WIC clinic immediately with any necessary changes.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
*(Caregiver/client signature) (date)*

**WIC Office Use:**

- The Rights and Responsibilities form and check education has been provided to the alternate caregiver.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
*(staff signature) (date)*

**Appendix 6**

**Fax Transmittal Coversheet**

<b>Date:</b>	
<b>Number of pages, plus this coversheet:</b>	

<b>To:</b>	<b>From:</b>
<b>Fax number:</b>	<b>Phone number:</b>

Remarks:

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**Confidential Information to Follow**

The following document includes confidential information protected by state and federal law. 7 CFR 246.26 protects information about applicants, clients, and vendors in the Special Supplemental Nutrition Program for Women, Infant, and Children (WIC). Chapter 70.02 RCW further protects any health care information contained in the attached documents.

You may not disclose this information to anyone without the specific written consent of the person to whom it pertains, or as otherwise permitted by state law. Notify the Washington State Department of Health, WIC Nutrition Program, 1-800-841-1410 if you or others seek to make further use of this information, including, but not limited to, entering any of documents into an administrative or judicial proceeding.

If you have received this information in error, please contact the sender immediately.

**Appendix 7**

**Request for WIC Record**

Client name \_\_\_\_\_ Birth date \_\_\_\_\_

Custodian name (if applicable) \_\_\_\_\_

Please complete the information below:

- I request a copy of the health information in my WIC record.  
Specify which dates are needed, or what health information is needed:
  
- I request a copy of my entire WIC record, which includes appointments, topics covered, notes and check cashing history.

I am the legal custodian of \_\_\_\_\_ and:

- I request a copy of the health information in my child's WIC record  
Specify which dates are needed, or the entire record:
  
- I request a copy of my child's entire WIC record.

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

Date request received _____ Date information given to requester _____
Staff name _____



**Appendix 8**  
**Individual Authorization to Release WIC Information**

Client name \_\_\_\_\_ Birth date \_\_\_\_\_  
Custodian name (if applicable) \_\_\_\_\_

1. I give my permission to release my or my child's confidential client information obtained during my or my child's participation in the WIC program. I understand that without my signature and specific consent, this information cannot be released except as otherwise authorized by law.
2. Some information is specifically protected. Information about sexually transmitted diseases, drug and alcohol diagnosis and treatment, and mental health diagnosis and treatment will not be released unless I sign in the Specifically Protected Information box below.
3. I understand that I can take back this permission at any time by signing and dating a written statement that I am canceling my permission.
4. I understand that if I choose not to sign this form, it will not affect my or my child's eligibility for or participation in WIC.
5. I understand that this permission to disclose expires on \_\_\_\_\_.

Name of person to receive information	Name of person to receive information
Address	Address
Phone	Phone
Fax	Fax

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

I give permission to release Specifically Protected Information as indicated by my initials below.

- \_\_\_\_\_ Sexually Transmitted Disease Information
- \_\_\_\_\_ Drug and Alcohol Diagnosis and Treatment Information
- \_\_\_\_\_ Psychiatric Disorders/Mental Health Diagnosis and Treatment Information

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

(If applicable) This form was verbally translated by: \_\_\_\_\_

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

For Clinic Use
The information described above was released on _____ (date) Signature _____

### Appendix 9

#### Agreement between the (name of WIC agency) And (name of the receiving organization)

This Agreement establishes the parameters within which WIC client information may be shared with another entity without individual client consent.

The WIC program will notify clients in writing, and in the appropriate language, that their information may be shared with the receiving entity. This notification will be attached to program materials such as the WIC Rights and Responsibilities form.

- Clients will not be required to sign any document saying they have been notified.
- Clients do not have the right to refuse to have their information shared.

The receiving entity will:

1. Use the client information only for one or more of the following purposes: (Check all that apply):
  - Establishing the eligibility of WIC clients for the programs or services by the other entity
  - Conducting outreach to WIC clients for the programs or services by the other entity
  - Enhancing the health, education, or well-being of WIC clients who are currently enrolled in the programs or services by the other entity
  - Streamlining administrative procedures in order to minimize burdens on staff or clients in receiving the programs or services by the other entity
  - Assessing and evaluating the responsiveness of the other entity health system to client's health care needs and outcomes
2. Not use the information for any other purpose or disclose the information to a third party.
3. Ensure confidentiality of the WIC data by (describe) \_\_\_\_\_.

This Agreement is in effect until it is \_\_\_\_\_ (date)

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Signature of WIC Coordinator and date

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Signature of Administrator of receiving entity and date

Approved by \_\_\_\_\_ at the State WIC office on (date) \_\_\_\_\_

**Appendix 10**

**Agreement Regarding the Sharing of WIC Client Information  
with other Programs or Services in the \_\_\_\_\_ (name of agency)**

This document certifies the following agreement within the \_\_\_\_\_ (name of agency) regarding the sharing of WIC client information without individual client consent.

1. The WIC program will notify clients in writing that their information may be shared with other programs or services within the organization. This notification will be attached to WIC program materials such as the WIC Rights and Responsibilities form.
  - Clients will not be required to sign any document saying they have been notified.
  - Clients do not have the right to refuse to have their information shared.
2. The other programs or services are: (list)
3. The other programs or services will:
  - A. Use the client information only for one or more of the following purposes: (check all that apply):
    - Establishing the eligibility of WIC clients for other programs or services.
    - Conducting outreach to WIC clients for other programs or services.
    - Enhancing the health, education, or well-being of WIC clients who are currently enrolled in other programs or services.
    - Streamlining administrative procedures in order to minimize burdens on staff or clients in receiving other programs or services.
    - Assessing and evaluating the responsiveness of other programs or services to client's health care needs and outcomes.
  - B. Not use the information for any other purpose or disclose the information to a third party.
  - C. Ensure confidentiality of the WIC data by (describe) \_\_\_\_\_.

This certification is in effect until \_\_\_\_\_ date.

---

Printed name, signature of agency director/ date

Approved by \_\_\_\_\_ at the State WIC office on (date) \_\_\_\_\_