

APPENDIX 202

TRANSMISSION, STORAGE, AND CONFIDENTIALITY OF MEDICAL, HEALTH, AND DISABILITY-RELATED INFORMATION

Any medical, health, or disability-related information about a particular person – whether that person is an applicant to Job Corps, an enrollee, an employee, an applicant for employment, or anyone else – must be treated with extreme care. Federal law requires that all such information be treated as strictly confidential, and that it be transmitted and stored in a way that ensures confidentiality.

This appendix explains the rules for transmission, storage, and confidentiality of medical and disability-related information in Job Corps.

What information is disability-related?

This category is broader than you might think. It includes *any* information that *indicates* (even if it doesn't explicitly state) that a particular person has a disability. For example, the fact that a particular applicant or student has an Individual Education Plan, or had one at some point during their education, means that he or she has a learning disability. Therefore, that fact is “disability-related information” that must be treated as confidential.

The category “disability-related information” is not limited to hard-copy or electronic records. It also includes discussions about the fact that a particular individual has a disability, or about specific details (such as a person's physical or behavioral symptoms, use of particular devices or equipment, or types of treatment) that indicate that he or she has a disability. Of course, some of the latter types of details will also fall under the category of medical information, and must be kept confidential as well.

Confidentiality: The General Rule is Do Not Tell

The Federal disability nondiscrimination laws that apply to Job Corps list specific categories of persons who are allowed to obtain medical (including health) or disability-related information about a particular individual. This means that unless you know that a given person falls into one of the specified categories, you must assume that the person is not entitled to medical or disability-related information about someone else; in other words, your default setting must be “don't tell.”

Who may be informed either about the fact that a particular individual has a disability, or about specific details related to a disability or medical/health condition?

Only people in the following categories, and only when they **need to know** (“need to know” is interpreted narrowly):

- *Admissions counselors* who:
 - Need to know whether they will need to provide one or more accommodations, or communication aids, for an applicant and/or his or her parent or guardian during the admissions process
 - Need to know whether an applicant is entitled to a waiver of the upper age limit for admission because he or she has a disability
 - Must make a decision about an applicant's financial eligibility based on his or her status as a family of one
- *Instructors, residential staff, other center staff* – **only** those who **need to know** about:
 - An accommodation the person will be provided
 - Necessary restrictions on a person's duties, activities, diet
- *First aid and safety personnel* – **only if**:
 - The condition might require emergency treatment
 - The participant might need special assistance in an emergency evacuation
- *Administrative staff* of the center, center operator, Regional or National Office, or DOL (or other operating federal agency) who are doing monitoring or data validation
- *Government officials* investigating compliance with requirements related to nondiscrimination and/or equal opportunity
- *Health and wellness staff* who are examining or treating a particular person
- *Others* – only on a **need-to-know** basis (interpreted narrowly)

Knowledge Versus Access

The categories of persons who are permitted to have access to a particular individual's underlying medical, health, or disability-related documents are still more limited: even among those who may be informed either about the fact that an individual has a disability, or about specific details related to a disability or medical condition. Very few people will genuinely need to see or use those documents.

Examples:

- Access to medical documentation that a participant is entitled to status as a family of one, or waiver of the upper age limit, should be limited to staff members who need to document the basis for such decisions.
- First aid personnel may need access to underlying documentation related to a person's medical condition in an emergency.

- Administrators or health and wellness staff who are considering whether a request for a reasonable accommodation should be granted may need to review documentation that is submitted in support of the request. In these cases, however, you should think about removing personally identifiable information from the documents. This approach has the advantage not only of protecting confidentiality, but also of helping ensure that the decision-makers base their determination solely on the facts of a particular case.
- Instructors, residential staff, or other center staff who are working with, or providing accommodations for, a particular person will rarely, if ever, need to see the person's medical records or other documents that demonstrate that he or she has a disability.

Storage of Records that Contain Medical or Disability-Related Information

Federal disability nondiscrimination laws that apply to the Job Corps program require that any documents or other records that contain medical or disability-related information about a particular individual must be kept in files (either hard-copy or electronic) that are separate from all other information about the individual. Medical and disability-related information should be collected on separate forms and placed in the files reserved for medical and disability-related information. If a center, center operator, or staff member wants a document to be kept in a student's general file or an employee's personnel file, and that document happens to contain some medical or disability-related information, the medical or disability-related information must simply be removed from the document before it is put in the general or personnel file.

The files that contain medical and disability-related information must be stored in a way that satisfies the strict confidentiality and access requirements described above. In the majority of cases (particularly where hard copies of records are used), satisfying those requirements will mean that all medical- and disability-related records as a group must be stored separate from all other student, applicant, or employee files – in a separate drawer, file cabinet, or storage room, or on a separate server.

Regardless of whether the medical/health/disability files are maintained in electronic or hard-copy form, access to these files must be limited to the categories of persons listed in the "Knowledge Versus Access" section above. Hard copies of files must be kept locked, and access to the key or combination must be furnished only to authorized persons. Electronic files must be protected via passwords or other similar methods.

The requirement of separate storage makes sense when considered in the light of the laws requiring strict confidentiality of medical and disability-related information. The confidentiality requirements that apply to most information about a particular individual are less strict than the requirements that apply to medical and disability-related information. Therefore, while a number of different categories of outreach and admission/career transition services, center, or operator staffers may be permitted access to general information about a particular individual, a much narrower group is legally authorized to have access to the medical and disability-related records about that same individual. The most logical way to impose stricter limitations on access to the

latter records is to store them separately. The alternative would be to drastically limit the categories of people who have access to the individual's entire file, in order to protect the medical, health, and disability-related information the file contains. Then, only the categories of persons listed in the "Knowledge Versus Access" section above would be able to use, or even look at, the file.

Transmission of Medical, Health, and Disability-Related Information

When student, applicant, or employee records are being transmitted, the requirements described above still apply. Any and all records that are medical-, health-, or disability-related, or that contain any of those types of information, must be kept separate from other records about the individual. If hard copies are being transmitted, put medical, health, and disability-related information in a separate file, and place that file in a sealed envelope that is clearly marked as containing such information. You may want to consider using numbers, rather than names, on the outside of such envelopes to identify whose records they contain.

Staff members who receive or sort files about individuals – for example, center records department staff who handle applicant and student files – **must not open** any envelopes containing medical, health, or disability-related information, unless the specific staff member is in one of the categories of authorized persons that are listed in the "Knowledge Versus Access" section above. Instead, those envelopes must be transferred to persons who are legally authorized to have access to such information. In the case of applicant files that arrive on center from an outreach and admissions contractor, for example, the sealed envelopes should be sent to the Health and Wellness Director or other person designated to conduct the initial direct threat review and clinical care review.

Oral Transmission

Keep in mind that the confidentiality of medical, health, and disability-related information must be maintained when the information is being transmitted orally – in other words, when it is being discussed aloud. This means that you must be sure that all such discussions take place in private locations where unauthorized persons cannot overhear the conversation, either voluntarily or involuntarily. Cubicles, for example, are inappropriate places to confer about medical or disability-related matters, or even to mention such information, unless the discussion is conducted in such a way that it is impossible for anyone who overhears to identify the person whose information is being discussed.