



March 21, 2023

Administrative Procedure Manual Transmittal Letter No. 390

TO: Administrative Procedure Manual (APM) Holders
FROM: Matt Damschroder, Director
SUBJECT: Records retention Periods for Public Assistance Records and County access

This letter transmits the amendment of Internal Management rules in Chapter 5101:9 of the Administrative Code as a result of a periodic review. The following is a brief explanation of each rule and the changes to the rules.

Rule 5101:9-9-21: "County agency records retention, access, and destruction" is being amended. Minor edit to the rule.

5101:9-9-21.1 "Public assistance records: retention periods." This rule provides for a minimum seven-year retention period for active public assistance records. Minor edit made to the rule.

INSTRUCTIONS:

The following chart depicts what material should be removed from the Administrative Procedure Manual (APM) and what material should be inserted in the APM.

LOCATION	REMOVE AND FILE AS OBSOLETE	INSERT/REPLACEMENT
Chapter 9	5101:9-9-21 (effective 3/5/18)	5101:9-9-21 (effective 4/1/23)
Chapter 9	5101:9-9-21.1 (effective 5/26/20)	5101:9-9-21.1 (effective 4/1/23)

5101:9-9-21

County agency records retention, access, and destruction.

(A) The following definitions are applicable to this rule:

- (1) "County family services agency" has the same meaning as defined in section 307.981 of the Revised Code.
- (2) "Grant" means an award for one or more family services duties or workforce development duties of federal financial assistance that a federal agency provides in the form of money, or property in lieu of money, to the Ohio department of job and family services (ODJFS) and that ODJFS awards to a county family services agency or local area. Grant may include state funds ODJFS awards to a county family services agency or local area to match the federal financial assistance. Grant does not mean technical assistance that provides services instead of money and does not mean other assistance provided in the form of revenue sharing, loans, loan guarantees, interest subsidies, or insurance.
- (3) "Inactive records" refers to closed case files and those records that are no longer used on a regular basis.
- (4) "Local area," has the same meaning as defined in section 6301.01 of the Revised Code.
- (5) "Pass-through entity" means a non-federal entity that provides a federal award and/or state funds to a subrecipient to carry out a federal and/or state program, function, or activity.
- (6) "Record" has the same meaning as defined in section 149.011 of the Revised Code.
- (7) "Record series" means records that are filed together or maintained as a unit because they relate to a particular subject or function, result from the same activity, have a particular form, or have some other relationship arising from their creation, receipt, or use.
- (8) "Retention schedule" means a document that assigns a required retention period to a record series based on its fiscal, legal, historical or administrative value.
- (9) "Subrecipient" means a non-federal entity that expends federal awards and/or state funds received from a pass-through entity but does not include an individual that is a beneficiary of such program, function, or activity.
- (10) "Workforce development agency" has the same meaning as defined in section 5116.01 of the Revised Code.

- (B) Each county family services agency and local area shall comply with all applicable federal, state, and local records retention requirements for all records related to any program, function, or activity that is funded in whole or in part by state and/or federal funds. Local records retention requirements may be available through the county records commission in each county, which are established pursuant to section 149.38 of the Revised Code. The functions of the county records commission are to provide rules for the retention and disposal of county records, to review applications for one-time disposal of obsolete records, and to review schedules of records retention and disposal submitted by county offices.
- (C) Each county family services agency and local area shall have a records retention schedule that governs each record series maintained by the agency and that includes the requirements set forth in this paragraph. Each such records retention schedule shall at a minimum do the following:
- (1) Identify the name of the record series;
 - (2) Describe the use and purpose of the records;
 - (3) Assign a retention period based on the fiscal, legal, historical or administrative purpose value of the record series;
 - (4) Establish the method of disposition of the records when the retention period expires; and
 - (5) Comply with any minimum records retention requirements specified by applicable state law and regulations, applicable ODJFS records retention requirements, and applicable federal law and regulations, including, but not limited to, the following:
 - (a) 2 C.F.R. Part 200;
 - (b) 7 C.F.R. 272.1(f) applicable to the expenditure of food stamp program funds;
 - (c) 29 C.F.R. 95.53 applicable to non-profit organizations expending department of labor funds (DOL) funds;
 - (d) 29 C.F.R. 97.42 applicable to government units expending DOL funds;
 - (e) 45 C.F.R. 75.361 applicable to non-federal entities expending department of health and human services (HHS) funds; or

- (f) Any other federal award requirements related to any program, function, or activity the county family services agency or local area administers that is funded in whole or in part by federal funds.
- (D) In addition to having the records retention schedules required by paragraph (C) of this rule, each county family services agency and local area shall have a records retention schedule governing all records of its subrecipients that document a program, function, or activity for which the county family services agency's or local area's subrecipient receives state and/or federal funds. Each county family services agency and local area shall include in any contract or other type of agreement, including grant awards to subrecipients and subcontracts with service providers, all applicable minimum federal, state, and local records retention requirements for all records documenting a program, function, or activity for which the county family services agency's or local area's subrecipient, contractor or subcontractor receives state and/or federal funds. Any succeeding subrecipient or subcontractor of state and/or federal funds passed through from the county family services agency's or local area's subrecipient, contractor or subcontractor is subject to the same requirements stated in this paragraph.
- (E) Each county family services agency and local area shall retain financial, programmatic, statistical, and recipient records and supporting documents relating or pertaining to a federal award passed through from ODJFS for a minimum of three years after submittal of the final expenditure report for the grant, or applicable ODJFS records retention requirements, whichever is longer, unless otherwise provided by any minimum records retention requirements specified by applicable state or federal law. A county family services agency or local area may establish a minimum records retention period that exceeds the minimum retention period provided by this paragraph.
- (1) If any litigation, claim, investigation, criminal action, negotiation, audit, administrative review, or other action involving the records has been started before the expiration of the longer of the minimum retention period defined in paragraph (E) of this rule or before actual disposition of the records, the county family services agency or local area shall maintain the records until completion of the action and resolution of all issues that arise from it, or until the end of the longest applicable minimum retention period, whichever is later.
- (2) If final payment after closeout of the federal award has not been made before the expiration of the ~~longer of the~~ longest applicable minimum retention period defined in paragraph (E) of this rule or before actual disposition of the records, the county family services agency or local area shall maintain the records until final payment is made and resolution of all issues that arise from it, or until the

end of the longest applicable minimum retention period provided in paragraph (E) of this rule, whichever is later.

- (3) Each county family services agency and local area shall maintain a current file of all records that have been subject to a federal or state audit, administrative review, or other action, and must refer to that file before requesting approval from the county records commission to destroy any record.
- (F) Each county family services agency and local area shall annually provide or make available to ODJFS the agency's records retention schedules, including any records retention schedule adopted pursuant to paragraph (D) of this rule. Each county family services agency and local area shall make its current records retention schedule readily available to the public.
- (G) Each county family services agency and local area shall establish policies and procedures for the transfer and storage of inactive records that comply with all applicable state, federal, and local requirements. Secondary locations used for storing inactive records must provide adequate security and allow for the prompt and efficient retrieval of requested records.
- (H) The requirements regarding access to records are as follows:
- (1) Each county family services agency and local area shall adopt a public records policy for responding to public records requests in accordance with section 149.43 of the Revised Code. Public records do not include information or records specifically exempted from treatment as public records in division (A) (1) of section 149.43 of the Revised Code, or information or records that are expressly made confidential under other federal or state laws or regulations.
 - (2) All records documenting a program, function, or activity for which the county family services agency and local area receive state and/or federal funds must be made available to authorized governmental agencies, including, but not limited to, ODJFS, the auditor of state, and other Ohio funding sources and federal funding sources upon request. This access to records includes, but is not limited to, all financial and programmatic records, supporting documents, statistical records, and other records of recipients, subrecipients, contractors, and subcontractors. This right of access is not limited to any required minimum retention period if the records are still being retained and have not been disposed at the time of the request.
 - (3) All information and records concerning an applicant, a recipient, or a former recipient must be safe guarded from release as specified by applicable state and federal law and regulations, including, but not limited to, rules 5101:1-1-03,

5101:4-1-13, and 5160-1-32 of the Administrative Code, and section 5101.27 of the Revised Code, and are subject to all applicable intercounty transfer requirements, including, but not limited to, rules 5101:1-1-13 and 5101:4-8-19 of the Administrative Code.

- (4) All public records as defined in division (A)(1) of section 149.43 of the Revised Code must also be made available for inspection or copying to any person at all reasonable times during regular business hours, as specified in division (B) of section 149.43 of the Revised Code.
- (5) Each county family services agency and local area shall maintain its records in such a manner that the agency can fulfill its records access obligations promptly and efficiently.
- (I) Each county family services agency and local area shall obtain approval from the county records commission before destruction of any records in accordance with section 149.38 of the Revised Code. Pursuant to section 149.38 of the Revised Code, the county records commission approval must in turn be reviewed by the Ohio history connection, and upon completion of the Ohio history connection's review of the request to dispose the records, the auditor of state must approve or disapprove the request.
- (J) After permission to destroy the records has been obtained, each county family services agency and local area shall follow the requirements established by the county records commission for disposal of county records.
- (K) Notwithstanding the provisions in this rule, each county family services agency and local area shall continue to follow any minimum applicable ODJFS, state, and federal records retention requirements requiring a longer minimum retention period than the general three-year retention period stated in paragraph (E) of this rule, such as children services case records retention requirements set forth in rule 5101:2-33-23 of the Administrative Code, and any other program-specific records retention requirements established by other state or federal law, unless directed to comply with the minimum records retention requirements provided in this rule.
- (L) The retention, destruction and access provisions adopted or established by a local area pursuant to this rule will apply to every workforce development agency within that local area.

Effective: 4/1/2023

CERTIFIED ELECTRONICALLY

Certification

03/16/2023

Date

Promulgated Under: 111.15
Statutory Authority: 5101.02
Rule Amplifies: 329.04, 329.05, 5101.27, 5101.28
Prior Effective Dates: 03/07/1982, 04/01/1988 (Emer.), 06/30/1988,
02/15/1996, 11/01/1996, 08/23/2008, 03/01/2015,
03/05/2018

5101:9-9-21.1

Public assistance records: retention periods.

(A) The following definitions are applicable to this rule:

(1) "Inactive records" means closed case files, where the assistance group (AG):

(a) Is no longer receiving benefits;

(b) Has no pending administrative action, hearing or appeal; and

(c) The county agency no longer has a legal duty to act on the case.

(2) "Public assistance record" means any record maintained in a case file related to an Ohio works first (OWF), food assistance, prevention, retention, and contingency (PRC), disability financial assistance, or refugee cash assistance group (AG).

(3) "Record" has the same meaning as defined in section 149.011 of the Revised Code.

(B) The minimum retention period for public assistance records is seven years, except as provided in paragraphs (C) and (D) of this rule.

(C) The following records may not be destroyed while the AG is active, and must be maintained for a minimum of three years from the date the AG becomes inactive:

(1) Enumeration verifications;

(2) Application forms and verifications that established initial program eligibility; and

(3) Documents that establish eligibility factors such as incapacity, limiting physical factors, and eligibility for supplemental security income (SSI).

(D) Notwithstanding the requirements outlined in rule 5101:4-1-05 of the Administrative Code, any records existing in the AG file on the date the AG becomes inactive must be maintained for a minimum of three years from the date the AG becomes inactive, regardless of the age of the records.

(E) Rule 5101:4-1-05 of the Administrative Code governs the retention of food assistance records and must be followed in conjunction with the requirements of this rule.

(F) Counties that wish to selectively destroy documents from public assistance AG records in accordance with the requirements of this rule must specify the retention periods of the affected documents on the appropriate retention schedules.

Effective: 4/1/2023

CERTIFIED ELECTRONICALLY

Certification

03/16/2023

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