

Special Milk Program for Children

Federal Law: Special Milk Program for Children (SMP) Confidentiality Provisions

Theme: Social Service Programs

Citation: [42 U.S.C. § 1758\(b\)\(6\)](#); [7 C.F.R. § 215.2](#); [7 C.F.R. § 215.13a](#); see also [7 C.F.R. § 245.6](#)

THE LAW

What does the law do?

The Special Milk Program for Children (SMP) confidentiality provisions protect eligibility information contained in applications for children’s free milk. Generally, state agencies responsible for administering SMP can [only disclose SMP eligibility information to persons and organizations authorized by the Richard B. Russell National School Lunch Act \(NSLA\)](#). Disclosures of SMP eligibility information are permitted for establishing eligibility or administration for certain federal, state or local programs without parental consent.

To whom does the law apply?

The SMP confidentiality provisions apply to state agencies and child care institutions administering the SMP program.

How is “identifiable” information defined?

The law restricts disclosures, defined as using or revealing “[individual](#)” children’s information. The SMP confidentiality provisions allow disclosures of aggregate information if the aggregate information does not identify individual children or when children cannot be identified “[by means of deduction](#).”

SHARING OF IDENTIFIABLE DATA

Does this law allow identifiable data to be shared?

[State SMP agencies and child care institutions can use or disclose](#) SMP eligibility information without parental consent to persons directly connected to the administration, enforcement, or audit of certain programs or activities. SMP eligibility information can also be disclosed to the Medicaid program and the Children’s Health Insurance Program (CHIP) for targeting and identifying children who might be eligible for Medicaid or CHIP. State agencies and child care institutions can use or disclose protected SMP information with prior written consent from children’s parents or guardians.

Among who?

Generally, [SMP eligibility information can only be disclosed to individuals or organizations that have a “need to know” the information](#) due to a direct connection with the administration or enforcement of a federal education program, State education program, State health program, a means-tested nutrition program, or any program authorized under the NSLA or the Child Nutrition Act of 1966 (e.g., the National School Lunch Program, Child and Adult Care Food Program, School Breakfast Program, Summer Food Service Program, and the Special Supplemental Nutrition Program for Women, Infants and Children). SMP eligibility information can be disclosed

to Medicaid and CHIP to facilitate enrollment in those programs. The Comptroller General Office and law enforcement officials can also receive protected SMP eligibility information for audit or enforcement activities.

What are the prerequisites and conditions?

The [law only permits the disclosure of a child's name and eligibility status \(without parental consent\)](#) when the disclosure is to a federal education program, State education program, State health program, a means-tested nutrition, or a third party contractor assisting with eligibility. In contrast, all SMP eligibility information can be disclosed to any program authorized under the NSLA or the Child Nutrition Act, Medicaid, CHIP, the Comptroller General Office, and law enforcement officials. A [written agreement is required for disclosures to Medicaid or CHIP programs](#) and [recommended for disclosures to other programs](#). Parents and guardians must be notified of disclosures to other programs, including Medicaid and CHIP. Parents and guardians must be provided an [opportunity to decline](#) disclosures to Medicaid or CHIP ([10 calendar days is recommended](#)). Written consent for the disclosure of eligibility information must meet [certain regulatory requirements](#).

SHARING OF DE-IDENTIFIED DATA

Does this law allow de-identified information to be shared?

The SMP confidentiality provisions [permit the disclosure of aggregate information](#) that does not identify an individual student and does not permit identification by deduction. For example, disclosing the aggregate data for [one classroom could permit the identification of individuals](#), but aggregate data for a [school district would be less likely to permit the identification of an individual](#). Parental consent is not needed for disclosures of aggregate data.

Does this law define de-identification or standards to render the data de-identified?

The SMP confidentiality provisions identify [aggregation](#) as a method to render data non-identifiable (i.e., free to use or disclose).

DATA SHARING IMPLICATIONS FOR PUBLIC HEALTH

Does this law support data sharing to improve the health of communities?

The SMP confidentiality provisions permit data sharing to facilitate enrollment in other social service programs that promote community health, including Medicaid, CHIP, and other child nutrition programs.

How does this law hinder data sharing to improve the health of communities?

The SMP confidentiality provisions place strict restrictions on uses of SMP eligibility information. The law does not contain general disclosure provisions that permit disclosures or uses for public health or research uses.

Does this law establish prerequisites, conditions, or limitations for data sharing, not previously identified?

Not applicable to this law.

What other terms apply to sharing this data?

The SMP confidentiality provisions [restrict additional disclosures](#) beyond the purpose of the initial disclosure. The SMP confidentiality provisions contain [criminal penalties](#) for unauthorized disclosures of SMP eligibility information.

What remedies or solutions might be employed to support data sharing while complying with this law?

Federal Food and Nutrition Service guidance provides prototype forms and agreements, including [data sharing agreements](#) and [household notice, consent and program application forms](#).

What ethical considerations apply to the exercise of discretion to share data under this law?

SMP serves many vulnerable populations (e.g., low income individuals, children). Some SMP participants or parents might feel coerced to provide information to gain access to needed SMP services.

Additional information relating to the confidentiality provisions for SMP and other nutritional programs can be found [here](#).

SUPPORTERS



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The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation.

This document was developed by Cason Schmit, Research Assistant Professor, Texas A&M University and reviewed by Jennifer Bernstein, Deputy Director, Mid-States Region of The Network for Public Health Law. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.