

The logo for the Alliance for Children's Rights, featuring a stylized orange and white graphic of a child's head and shoulders.

ALLIANCE
for **CHILDREN'S**
RIGHTS

Understanding Confidentiality Rules

Today's Speakers

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Logistics

- Webinar will be recorded and archived at www.stepupforkin.org/trainings
- All attendees will be on mute – type any questions you have into the chat box or if you experience technical difficulties email Elise Weinberg – e.weinberg@kids-alliance.org
- A certificate of participation will be posted online after the webinar at www.stepupforkin.org/trainings
- We will be answering your questions – please submit questions using the “questions” function on your GotoWebinar dashboard

Agenda



- Overview of confidentiality issues
- Confidentiality in dependency court and delinquency
- Confidentiality in the context of Continuum of Care Reform
 - Child and Family Teams (CFTs)
 - Resource Family Approval (RFA)

CONFIDENTIALITY OVERVIEW

Understanding the underlying issues

Balancing Values

Foster children are people.

They have interests in privacy and dignity concerning their education, health, and mental health care. Children need to trust their teachers, doctors, and therapists.

Education, health, and mental health care providers, caseworkers, and caregivers need information.

To ensure children's safety and provide high-quality care, providers, caseworkers, and caregivers need complete and up-to-date information.

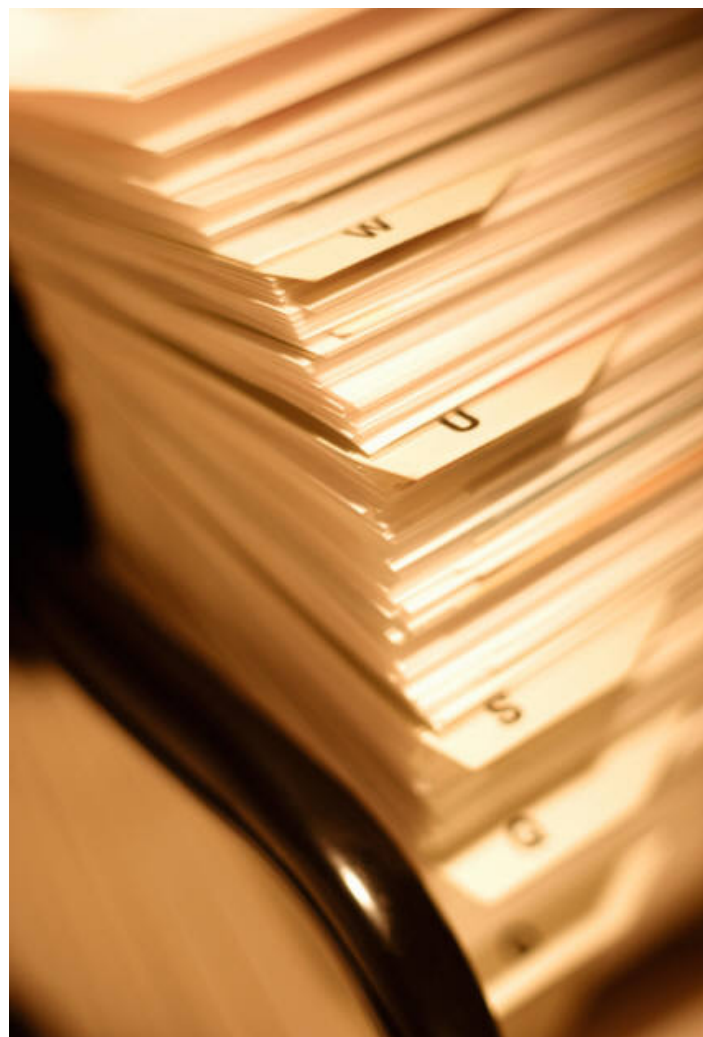
Three Kinds of Rules

- **Education, health, and mental health information confidentiality rules** governing disclosure of information by providers
- **Juvenile court confidentiality rules** governing disclosure of information in a child's juvenile court case file
- **Privilege rules** restricting use of information as evidence in court

Two Questions

1. What information can education, health, and mental health providers share with child welfare agencies?
2. What information can child welfare agencies share with education, health, and mental health providers?

When can health and mental health providers share information about children/youth in foster care with a child welfare agency?



General Rule

- Under HIPAA, CMIA, and the Lanterman Act, children's health and mental health records are confidential. They cannot be disclosed to anyone without consent by a parent (or by the child, for minor consent health care services)
- The same person (usually a parent) who makes decisions about health and mental health services/treatment *also* makes decisions about disclosure of information.

Exceptions to the General Rule

Health and mental health information may be disclosed, without patient/parent consent:

- To other health/mental health care providers for purpose of diagnosis or treatment;
- In response to court order or subpoena;
- If required as part of mandated child abuse/neglect reporting

How the General Rule Changes When the Child is in Foster Care

The person who makes decisions about health/mental health treatment (parent, foster parent, or caseworker) is often *not* the same person authorized to make decisions about disclosure of information.

Who consents to disclosure of health/mental health information for foster children?

- **Child** makes disclosure decisions about minor consent health care services.
- **Parent** may no longer make disclosure decisions if there's a conflict of interest.
- **Foster parent** may consent to routine health care but does not make disclosure decisions.
- **Caseworker** may disclose information for purpose of coordinating care.
- **Child's attorney** may make disclosure decisions on behalf of child (in place of parent).

Foster care exception to health/mental health confidentiality

- **Providers** may disclose foster children's health and mental health information to caseworker for purpose of coordinating care & treatment.
- **Caseworkers** may re-disclose information to other providers & caregivers to coordinate care & treatment.
- **Caregivers** receive summary of child's medical and mental health information ("passport") & keep it updated.

Confidentiality exception does not include therapy notes

- When disclosing foster children's information to caseworker for coordination of care, providers *cannot* disclose "psychotherapy notes" (i.e. notes about content of therapy sessions).
- Providers *can* disclose: medication prescriptions, session dates and times, treatment methods, test results, summary of treatment plan, progress, prognosis.

Confidentiality vs. Privilege

- Some information that may be disclosed by a health/mental health care provider to child's caseworker for purposes of coordination of care may *also* be a "confidential communication" between the child and doctor/ therapist, which cannot be included in court reports or testified about in court.
- "Confidential communication" means information shared between patient and doctor or therapist in confidential setting, and includes diagnosis and advice given by doctor or therapist.

Role of foster child's attorney

- Child's attorney has access to child's education and health/mental health information.
 - Providers & caseworkers may disclose information to attorney.
- Attorney (or mature child) may invoke doctor-patient or therapist-patient privilege to prevent confidential communications from being used in court.
 - Providers & caseworkers may not testify about confidential communications, nor include them in court reports, unless privilege is waived.

**When can local education agencies
share information about foster
children with child welfare agency?**

General Rule

- Under Family Educational Rights and Privacy Act (FERPA) and state law, students' education records are confidential and cannot be disclosed to anyone without consent by a parent (or other person holding education rights).

Exceptions to general rule – Education information

Education information may be disclosed without parent consent:

- To school officials who have a “legitimate educational interest” in the information.
- To contractors, consultants, volunteers, etc. providing educational services.

Foster care exception to education information confidentiality

- Local Education Agencies (LEAs) are required by state law (and permitted by FERPA) to disclose foster children's education information to caseworkers who are legally responsible for care of child.
- Caseworkers may re-disclose foster children's educational information to individuals and entities engaged in addressing child's educational needs.

Foster care exception to confidentiality of education information, continued

- Caseworker must include education information in case plan.
- Caseworker must include education information in “passport” given to caregiver.
- Caregiver must keep “passport” updated.

System-level data sharing and coordination

- County child welfare and probation agencies, school districts, and county offices of education are permitted by state law to develop cooperative agreements to share education information.
- These agencies are required to work together to promote school stability and address educational needs.

When can child welfare agencies share information about children in foster care with education, health, and mental health care providers?

General Rule

All information in a child's juvenile court file (petition; caseworker's reports and attachments; court orders) is confidential and can only be accessed by judge, attorneys, parents and children. (WIC § 827)

Caseworkers *may* disclose information to health/mental health providers when...

- Provider is person or agency providing treatment or supervision to the child, or member of multidisciplinary team formed to investigate child abuse.
- Permitted by a court order.

Caseworkers *must* disclose information to schools ...

- When child is placed in a 'licensed children's institution' such as a group home, caseworker must notify the LEA and provide information to ensure appropriate educational placement.
- When caseworker becomes aware that a placement change may result in a school change, must contact the LEA and coordinate to facilitate child remaining in school or origin, or prompt transfer to new school.

Caseworkers *may* disclose information to schools...

- When caseworker has health/mental health information about child that is needed by LEA for purposes of coordinating the child's care.

CONFIDENTIALITY OF DEPENDENCY RECORDS

Overview

What is a Juvenile Case File?

How does WIC § 827 protect juvenile records?

- Who
- What Info
- Use

What is a Juvenile Case File?

Welf. & Inst. Code § 827



- Documents/information in a juvenile case file (including DCFS files) **are** protected by **WIC §827**.
- Information does **NOT** need to be from a **juvenile case file** to be protected.
 - **Every document** contained in a DCFS file.
 - Even if the case did not go to Court.
 - **Testimony** and/or **statements** of a social worker if **based upon information** relating to the contents of a DCFS file.
 - **Every document** in the court case file.

What information is part of a juvenile case file?

- Generally, all documents in the possession of DCFS that **relate to child abuse/neglect investigations** are confidential.
- Protected Information maintained by DCFS includes
 - Child abuse **referrals** and **investigations**
 - (unfounded, inconclusive or substantiated)
 - **Suspected Child Abuse Reports** submitted to DOJ (CANRA)
 - Non-court cases (Voluntary Family Maintenance)
 - Juvenile **Court Records**



How Does WIC § 827 Protect Juvenile Case Information?

- It restricts access to juvenile case files, documents contained therein, and information relating to those documents.
- It restricts the type of information released.
- It restricts the use of the information relating to those files and documents.



Juvenile Case Files May Not be Obtained by a Subpoena

- Juvenile case records “cannot be obtained by a subpoena.” (*Lorenzo P. v. Superior Court* (1988) 197 Cal.App.3d 607, 611.)
- *California Rules of Court*, Rule 5.552 (b)(4) states that “juvenile case files may not be obtained or inspected by civil or criminal subpoena.”



Persons/Entities Entitled to Inspect and Receive Copies of Juvenile Case Files Without a Court Order (WIC §827)

- Court personnel (includes CASA)
- District attorneys, city attorneys & city prosecutors prosecuting criminal or juvenile cases under state law
- The minor who is the subject of the proceeding
- The minor's parent or guardian
- State Department of Social Services & licensing agencies (including investigators with the State and local police)
- Attorneys for the parties, hearing officers, probation officers & law enforcement officers actively participating in criminal or juvenile proceedings involving the child
- The County Counsel, City Attorney, or any other attorney representing the petitioning agency in a dependency action.
- Other child protective agencies



Persons/Entities Entitled to Inspect Juvenile Case Files Without a Court Order (WIC §827)

- Superintendent of a school district (or his/her designee) where the minor is enrolled
- Authorized CDSS peace officers who investigate community care facilities
- Members of the multidisciplinary team
- Persons or agencies providing treatment or supervision to the child
- Juvenile justice commissioner
- Any other person designated by the court

Individuals in Family Law or Probate Entitled to Inspect and Receive Copies of Child Welfare Files (WIC § 827.10)

- WIC § 827.10 authorizes certain persons involved in family law or probate matters to inspect and receive copies of child welfare files if these persons are actively participating in a family law or probate case.
- Persons who may be permitted access and obtain copies include:
 - Judge, commissioner, other hearing officer
 - Parent or legal guardian of the minor
 - An attorney for a party to the family law or probate case
 - A family court mediator
 - A court-appointed investigator
 - Counsel appointed for the minor in family law case



Who May Access Records: Evaluators and Investigators



Child Custody Evaluators and **Guardianship Investigators** who are appointed by the court are able to inspect and receive copies of a child welfare file.

The **evaluator/investigator** may:

- **Obtain a recommendation from the CSW** regarding the child's safety and need for juvenile court protection.
- **Summarize the information** obtained from the child welfare file which includes statements made by the parents and child to provide to family law court.

Person/Entity Not Listed in WIC § 827

- The Juvenile Court has **exclusive authority** to determine the extent to which Juvenile case records can be disclosed.
- Only the Juvenile Court may order the dissemination of juvenile case information through a petition filed through the Juvenile Court.
- Therefore, any person not listed in WIC § 827 **must file a petition** with the Juvenile Court in order to gain access (JV- 570).



Disclosure of Reports Made To Child Protection Agencies

Reports made by a reporter to a child protection agency per PC § 11167(d)(1) may be **disclosed only** to:

- **Agencies** charged with **investigating** child abuse.
- **District Attorney or County Counsel** involved with criminal prosecution of child abuse, WIC §§ 300 or 602 cases.
- **Licensing agency investigating out-of-home abuse/neglect** (may also get the investigative notes.)
- **Child's dependency attorney** appointed per WIC § 317(c)
- When those **persons waive confidentiality**.
- **By order of the court.**

* Family Law and Probate Attorney's are not on this list.

Non-Minor Dependents (NMDS)

WIC § 362.5 created special rules regarding the records for a NMD.

Access is limited to:

- Court personnel
- The DA only if the NMD is also a delinquent ward
- The NMD
- The NMD's attorney
- Judges and other hearing officers actively participating in juvenile proceedings involving the NMD
- DCFS and Probation
- CDSS
- County Counsel
- Certain personnel of the DSS

NOTE: NMD's parent(s) and attorney may only access file if still receiving family reunification services.

Requests for Records by Caregivers



Generally, the **caregiver may obtain** from DCFS the following information concerning the child:

- **School records** and information (WIC § 16010(a) & (c) & 42 USCS 675(1)(C) & (5)(D))
- **Medical records** and information that are a part of the health summary or related to treatment (WIC §§ 16010(a) & (c), 16010.5 & 42 USCS 675(1)(C) & (5)(D))
- **Court information**: Visitation with parents & siblings; name, phone, fax, and email of assigned CSW/SCSW, child's attorney, and CASA; child's needs and services; copy of birth certificate, etc. (WIC § 16010.4(e))

De Facto Parents

- De Facto parents are not automatically entitled to copies of social worker's report or other documents.
- De Facto parents receive their discovery through WIC § 827 and should be limited to that which is relevant to the issues the de facto parent is involved
- Must file a **JV-570**.

Seiser & Kumli, § 2.109[15]

In re Damion B. (2011) 202 Cal.App.4th 880

In re B.F. (2010) 190 Cal.App.4th 811

In re Matthew P. (1999) 71 Cal.App.4th 841



CASA

- CASA considered “court personnel” under WIC § 827(a)(1)(A). **May inspect and obtain copies** without a court order. Must file a **Declaration in Support of Access to Juvenile Records**.



Adoption Issues

- Remember the multiple layers of protection.
- What adoption information, if any, may be released and/or inspected by persons not a party to the adoption?
 - Generally, **all adoption information is confidential** and is **not to be released** (or inspected) by anyone who was **not a party to the adoption**.
 - This applies to persons/entities even if otherwise entitled to inspect a DCFS file.
 - *See Family Code §§ 9200-9206*

Information about the Adoptive Family

- Generally, **the birth family** (parents, siblings, relatives) **MAY NOT** receive identifying information about the **adoptive family** (including the adopted child).
- Generally, the **adoptive family** **MAY NOT** receive identifying information about **birth family**.



CONFIDENTIALITY & THE CONTINUUM OF CARE REFORM

Child and Family Team (CFT) Meetings,
Resource Family Approval (RFA)

Confidentiality Generally

- Counties must ensure Resource Family Approval (RFA) applications/records are kept confidential
- Counties must inform employees/contractors about its confidentiality guidelines and the confidentiality provisions in the State's Written Directives



DSS Written Directives

Confidential Case File includes information obtained during:

- Background check and criminal record exemption process (*See Written Directives 6-03A and 6-03B*)
- Psychosocial Assessment (*See Written Directives 6-05*)
- RFA Written Report (*See Written Directives 6-07*)

RFA Written Report includes:

- Identifying information about an applicant,
- Evaluation of home safety,
- Evaluation of background check and criminal record exemption results,
- Evaluation of psychosocial assessment,
- Evaluation of character references,
- A capacity determination, and more

RFA Written Report

- Information in the RFA Written Report can be released to individuals to whom it pertains (Section 4-04)
 - Upon written request, the County must provide the requestor copies of the material the requestor submitted or documents the requestor signed during the assessment process
- Information in RFA Written Report can be included in a social study prepared to assist the court with the placement determination
- The Written Report must be released to the applicant(s) (Section 6-07)
- Shall also be released as otherwise required by law

Information Sharing with a Caregiver

- Informed caregivers are better able to meet a child's needs
- Required to provide Health & Education Passport and contact information of important people involved in case
- Receive written, informed consent before disclosing information that pertains to other people (i.e. bio parents)



Child and Family Teams (CFTs)

- Required to convene a CFT
- CFTs identify support and services to achieve permanency
- Bring together individuals who have relationship with child
 - Must include the child/youth, family, caregiver, and placing agency caseworker (ACL 16-84)
 - Includes mental health representative and FFA representative, as appropriate
 - Should include others from child's community, i.e. coach, friends, extended family members, and others invested in child's life
- CFTs make recommendations regarding the child's case plan and the placement decision.

Information Sharing with the CFT



- May receive and disclose information and records to each other subject to confidentiality laws
- Information shared **with** a CFT is confidential
 - *Except if disclosure is otherwise required by law, i.e. disclosure to juvenile court*

CFTs and Written Authorization

- **All participants must sign an authorization to release information to team members**
- **Authorization**
 - In writing
 - Identifies CFT participants
 - Does not include release of adoption records
- **Transition of CFT member off the team**
 - No longer authorized to receive information

Deciding When to Disclose Information

. . . is not always easy!

- CFTs should consider whether disclosure would present “a reasonable risk of a significant adverse or detrimental effect on the child’s or youth’s psychological or physical safety.”
 - If yes, don’t release!

Potential Issues

- Sharing of assessment data
- CFT's purpose is to drive a case plan
- Access to assessment data is necessary
- Family and/or youth refusal to participate
- Weighing participation of non-mandatory team members

Hypothetical

Emily's CFT has been meeting for a few months now. The social worker, however, disagrees with the CFT recommendation. Sue, Emily's soccer coach, is a CFT member and wants to make sure the court is aware of the rationale for the disagreement.

Can Sue disclose the disagreement to the court? Does the social worker have to disclose the inconsistencies between the CFT recommendation and the case plan?

Ensuring a CFT's success

- CFTs are a necessary tool to meeting the goals of CCR, including the goal of having children and youth live in a permanent home with a committed adult who can meet their needs
- Success of CFTs largely depends on honest, respectful, and ongoing communication (See Core Practice Model Guide)
- <http://www.childsworld.ca.gov/res/pdf/CorePracticeModelGuide.pdf>

Hypothetical

Emily is very close to her Uncle Jay, who she asked to participate on her CFT. Uncle Jay wants to make sure Emily receives the services and support she needs, but he hesitates joining the CFT because he does not want to share their family's personal information with others who are not part of Emily and Jay's family.

How can we encourage Jay to join the CFT?

CFT Best Practices

- **Prepare the family:** Prior to convening a CFT, the child/youth and family should be informed of the CFT process and purpose
- **Be up front:** When the CFT convenes, members should discuss any concerns related to sharing information openly
- **Team approach:** Ensure CFT participants understand the importance of their participation
- **Trust building:** Help the CFT come up with a plan, its goals, and ways the CFT can build trust
- **Maintain humility:** There may be differences in culture, values, and perspective

RESOURCES AND TOOLS

RFA Toolkit

- Step by step instructions for families navigating RFA
- Vetted with relative caregivers
- Available online at www.stepupforkin.org

Resource Family Approval Guide



A project of The Step Up Coalition
stepupforkin.org



QUESTIONS?

