

A Manual
For the
Exchange of Information
In a
California Integrated Children's Services Program

By

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Acknowledgments

It is safe to say that this manual has been much anticipated. The Children's System of Care, with its focus on integrated systems and on family/professional partnerships, has brought issues of confidentiality to the forefront.

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INTRODUCTION

As California's human services for children and families move from a more compartmentalized approach to an integrated interagency service delivery system, the exchange of child-specific information between providers becomes a key issue in the successful development of an **Integrated Children's Services Program (ICSP)**. (Note: the term ICSP is used generically to describe any interagency effort to provide integrated services to children and their families and includes a variety of California initiatives such as Healthy Start, SB 163 Wraparound Pilot, Challenge Grant projects and Children's System of Care).

The issue is complicated by the fact that in the pre-integrated service system each service sector had its own set of rules, oftentimes more than one set, regulating the exchange of confidential information. Although there have been legislative attempts to accommodate interagency collaboration, these rules are still in effect. The challenge, therefore, in developing an integrated service program for children and their families is to incorporate the confidentiality rules of each participating sector into a workable interagency protocol. California law governing the exchange of information in an ICSP changed significantly on January 1, 1999, making it easier for agencies to share information, but still requiring full compliance with confidentiality laws governing individual agencies.

This manual is divided into several sections. The first section analyzes the concepts of **privacy, confidentiality and testimonial privilege**. The second section focuses on both the importance of the **free exchange of information between agencies** and of **confidentiality and the protection of privacy**. Within this section the manual focuses on the function of **informed consent** as a key mechanism for reaching a balance between these two important values.

The third section discusses the recently adopted **rules governing the exchange of information** within an ICSP. The fourth section identifies and discusses the **confidentiality statutes** governing each of the individual sectors of an integrated service system. The fifth section discusses implementation of an **interagency confidentiality policy** focusing on the development of a **Memorandum of Understanding (MOU)** and an **authorization for release of information**. The final section of the manual is a series of questions and answers related to confidentiality. Many of these questions have been posed by counties currently in the process of developing their Integrated Children's Services Programs. The **Appendix** at the end of this manual contains model Informed Consent forms developed by the Youth Law Center in San Francisco, a sample protocol used by Tehama County and relevant portions of confidentiality statutes.

I. A Few Key Terms Defined

Personal information exchanged with a treatment professional or agency is likely to be protected from disclosure for a variety of reasons emanating from several different legal sources. This section will define these concepts: **privacy**, **confidentiality**, and **testimonial privilege**.

Privacy

The right to privacy provides the broadest protection of personal information. Privacy

“Privacy is based upon individual autonomy, the right of each of us to self-determination.”

is based upon individual autonomy, the right of each of us to self-determination. As autonomous individuals we are able to make decisions regarding our

lives limited only by the constraint of not unreasonably interfering with the rights of others. Privacy is a subset of autonomy. It is the right to be left alone, which includes the right not to share personal information.

The right to privacy is found in the United States and California Constitutions.

Although the right to privacy is not explicit in the federal Constitution, the Supreme Court has interpreted several of the Constitution’s amendments to create such a right. The right to privacy does not include detailed prescriptions of what information may or may not be shared, but rather provides the constitutional basis for the concepts of confidentiality and testimonial privilege.

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Confidentiality

Confidentiality provides a much more specific protection to the disclosure of personal information than the right to privacy. In specific context, such as the mental health service system or the child welfare system, confidentiality rules limit with whom personal information can be shared. As a general rule **confidential information cannot be revealed to anyone outside the clinical relationship or specific service delivery system that originally received the personal information** unless the individual consents to further disclosure or the situation involves an exception to the rule of confidentiality. Exceptions include such circumstances, for example, as treatment emergencies and the threat of imminent danger to others. Confidentiality rules are generally found in statutes and regulations. These laws specify which information is covered by confidentiality rules and under what circumstances confidential information can be released. All service sectors participating in integrated children’s services have their own sets of confidentiality rules which are discussed later in this manual. In addition, mental health professionals and lawyers have professional codes of ethics which create

additional imperatives to protect personal client information from disclosure to others.

Testimonial Privilege

Testimonial privilege, often referred to simply as “**privilege**,” is an even narrower protection of personal information than confidentiality. It applies solely to communications made in the context of a confidential

relationship such as between a doctor and patient or an attorney and client. The communication is protected only as it relates to its disclosure in a legal proceeding. Because information communicated is privileged, a patient or client has the right to prevent a doctor, psychotherapist or lawyer from disclosing the information in court or other legal proceeding. The privilege, however, is waived and can never again be asserted if the client discloses the information or allows it to be disclosed to anyone who is not themselves part of a

privileged relationship or to whom disclosure is made in confidence for the accomplishment of the purpose for which the physician or psychotherapist was consulted. For example, a privilege is not waived if a patient permits the release of information from a former psychotherapist to the patient's current psychotherapist or from a school psychologist to a patient's teacher, but would be waived if he or she allowed the information to be released to a friend.

II. Values

A. The Need to Share Information

In developing an **Integrated Children’s Services Program (ICSP)**, the reasons for sharing information are obvious. Nevertheless it is important that those reasons be clearly understood when developing information-sharing policies.

Key elements of an ICSP are shared decision making and responsibility. In order to make the best decisions it is necessary that each member of the team have a common knowledge base regarding a particular child.

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The alternative to sharing information is that each agency creates its own knowledge base. Such a knowledge base is likely to be incomplete and lead to duplicative and therefore unnecessary assessment and testing of a child. Information sharing between agencies eliminates the need for this duplication, leading to greater efficiency and less burden on the child and family who will be freed from multiple assessments.

Information sharing between participating agencies is also a prerequisite for the efficient coordination of services. It

“It is only by knowing what services are available and what services a child and family are receiving from each sector of the ICSP that a single plan can be created that ensures that all entitlements are met and there are no gaps in service.”

is only by knowing what services and supports are available and what services a child and family are receiving from each sector of the ICSP that a coordinated plan can be created that ensures that all entitlements are met and there are no gaps in service.

Interagency information is also essential to measuring systems outcomes, another key aspect of ICSPs. Outcomes that reflect only the child’s progress in one sector do not give a complete picture. Oftentimes when measuring systems outcomes, such as the number of days a child is in out-of-home placements or reduction of costs, a particular sector of the Children’s System of Care (CSOC) will show improvement primarily because services shift to other sectors. By capturing system-wide data true outcomes can be measured and systems improvements can be planned.

B. The Need to Protect Privacy

The rules of confidentiality do not exist just to make it difficult for agencies to exchange client information with each other. Rather they reflect the fundamental societal values of autonomy and privacy. Personal

information is recognized as private. Confidentiality rules ensure that children and their families are free to choose with whom they will share that private information.

Confidentiality rules also serve a pragmatic function. By providing assurances that information will not be shared, confidentiality rules

encourage, for example, participation by a family in getting help for a child. The family is often more willing to share sensitive information when they know it will not be released elsewhere. Similarly guarantees of confidentiality are considered essential in encouraging participation in potentially stigmatizing programs such as mental health assessments or HIV testing. Confidentiality laws are legislative responses to the pervasive stigma associated with many of the sectors within an ICSP. Release of sensitive information might have a long-term impact on children and their families. Even within an ICSP knowledge of a child's psychiatric history, for example, might have a prejudicial effect on how a child is treated in a school setting. Limited information in certain circumstances might lead to a "fresh start" which would be in the child's best interest.

C. Balancing the Need to Know with the Privacy Interests of Children and Their Families - The Role of Informed Consent

If privacy, autonomy and stigma were not issues, the unfettered exchange of information among all participating sectors of a Children's System of Care, limited solely by the professional judgement of the participants, would be the most effective and efficient way to operate. However, because the very core of the Children's System of Care philosophy embraces the central role of the family and child in decision making and planning, any information exchange model must recognize the right of the child

and family to have the final say in the exchange of child-specific information. This family and child authority is operationalized through the development of an **informed consent** procedure. In order to be valid, consent must be voluntary and informed. Voluntariness requires that families and children be given real choices. A requirement conditioning participation in a program on the completion of a blanket common release form that provides a general consent to the release of all information to all participating agencies is not voluntary. There often is no real choice if access to services is made contingent upon the signing of a release of information form. If a parent, for example, is told that the only way to get needed mental health services for her child is by consenting to a blanket interagency agreement to share information among all participating programs, and she does not want to share that information with her child's teacher, she is being forced to choose between treatment and releasing

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information against her will. In this instance the choice to release information cannot be considered voluntary.

Families should be able to choose what information they want to share and with which agencies. Similarly, in order for consent to be informed children and families must fully

understand what information will be shared, with whom, how it will be used, and for how long the consent remains in effect.

III. How to Exchange Confidential Information Within an Integrated Children’s Services Program

On January 1, 1999, significant changes to the laws affecting the exchange of information in an ICSP in California became effective (Assembly Bill 1801 - Davis, Chapter 509, September 15, 1998). This section of the manual will incorporate this new law in describing how to establish appropriate policies and procedures for the exchange of confidential information.

A. Who Can Exchange Information

As amended, Welfare and Institutions Code §§ 18986.40 and 18986.46 establish the framework for exchange of information in an ICSP (for full text of statutes, refer to **Appendix A** at the end of this manual). This law allows for sharing confidential information among different agencies when the agencies are providing an integrated children’s services program. The definition of a covered program includes programs such as Children’s System of Care (CSOC). These programs provide a full range of integrated behavioral, social, health, mental health and applicable educational services to children with a serious emotional disturbance as part of a state initiative of the California State Department of Mental Health or the California State Department of Social Services. Covered programs also include local interagency efforts to provide integrated services to children and their families.

Members of ICSP child service teams may share information only when operating as part of the ICSP and not when acting solely on behalf of a specific agency or other entity. Only the work of team members when they are affiliated with the ICSP is considered to be work of the ICSP and therefore fully accessible to all other team members without additional consent.

B. What Information Can Be Shared

The rules permitting the sharing of confidential information within an integrated children’s services program differ according to the source of that information. The law differentiates between **three types of information**:

- (1) *records maintained by participating agencies or other entities prior to or separate from the ICSP;*
- (2) *information and records collected, developed and maintained by the ICSP within the scope of their service; and*
- (3) *information provided by the child or family.*

Access to the separate records of participating agencies requires valid written authorization by the child where he or she has the legal right to consent or otherwise by the parent or legal representative and must comply with the confidentiality requirements of the releasing agency. For example, the consent form for release of alcohol and substance abuse treatment records must comply with federal requirements that include:

- The specific name or general designation of the program or person permitted to make the disclosure;
- The name or title of the individual or the name of the organization to which disclosure is to be made;
- The name of the patient;
- The purpose of the disclosure;
- How much and what kind of information is to be disclosed;

- The signature of the patient and, when required for a patient who is a minor, ... incompetent or deceased, the signature of [an] authorized [representative];
- The date on which the consent is signed;
- A statement that the consent is subject to revocation at any time except to the extent that the program or person which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer;
- The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must insure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given. 42 CFR §2.31 (see **Appendix A**).

Once a child and family are participating in an ICSP, **information collected, developed, and maintained by the ICSP** either as part of a unified service record or held by an individual team member may be shared with any other team member for the purposes of developing an integrated services plan or delivering services to the child and his or her family. It should be noted that the Welfare and Institutions Code does not authorize the exchange of all information about an individual but only information necessary to develop a service plan or deliver services. If an individual has information in his record regarding a past crime he has committed, that information cannot be exchanged unless it is specifically relevant to the development of the plan or the provision of services. Information or records may be withheld from family members or their designees on

the team, however, when the team determines that disclosure presents a reasonable risk of significant harm to the minor's psychological or physical safety. This determination should be based on the professional judgement of the team members and the rationale should be fully documented in the record. Because of the importance of the family to the team, however, information should be withheld only in cases where the risk is clear and the harm substantial.

Information shared between team members does not require authorization or consent by the child or family. However, it may only be exchanged pursuant to a **Memorandum of Understanding (MOU)** agreed to by all participating providers and agencies. The MOU must specify the types of information that may be shared and must set forth the process which ensures the maximum protection of privacy and confidentiality rights by requiring each team member to maintain the same confidentiality obligations, and be subject to the same penalties as the persons disclosing confidential information. An excellent example of an MOU has been developed by Tehama County and is included in **Appendix B**.

Information provided by the child or family to the ICSP, however, cannot be shared as freely as other information. Before it can be shared between team members, the child, parent or authorized representative must provide express written consent. If a child, for example, told his mental health case worker of problems he was having in school, that information could not be shared with the school without written consent by the child or the child's authorized representative. Written consent for the exchange of information provided by the child or family can be included in the

single authorization discussed in section III D. The child and family should be informed that they can modify their consent at any time and may request that specific information not be shared.

C. Collection and Maintenance of Data

Unified Services Record

A key new provision of the statute allows the ICSP to keep a **unified services record** for each child and family. The unified record includes documentation of all services provided by the child service team as well as all records of prior services, which are necessary to formulate an integrated services plan.

Access to the unified services record is governed by the required Memorandum of Understanding among all participating service providers and agencies and is subject to all the privacy and confidentiality obligations and penalties for wrongful disclosure that govern each of the agencies. For example, before the record of a dependent child in treatment for drug abuse could be shared with an agency outside the ICSP a written consent form would need to be signed that complied with the stringent alcohol and drug abuse requirements set forth in section III.B (see **Appendix A**). Under certain circumstances an order obtained from the juvenile court which allowed redisclosure of the information would also be necessary as discussed in section IV.F. A unified services

record, while providing easy access to information for team members, increases the difficulty of releasing information to outside parties. Because multiple requirements are often burdensome, agencies should consider maintaining a separate record from the unified services record which would be subject only to the confidentiality requirements of that agency. It should also be noted that the alcohol and drug abuse regulations require that the written unified services record be maintained in a secure room, locked file cabinet, safe or similar container when not in use.

Common Database

In addition to the actual individual unified services record, an ICSP may maintain a computerized common database for the purpose of delivering services through the child service team. The database may contain demographic as well as individual service data. This information may only be used within the ICSP unless the appropriate child, family member, or representative consents to additional disclosure.

Additionally the ICSP may authorize the use of information contained in the database for evaluation and research purposes if the identity of individual clients is

protected. Research data cannot include any information that either identifies a child or the child's family, or by which the identity can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information.

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D. Informed Consent

In order for child and family records maintained by participating agencies to be shared with the child service team, **informed consent** is required. The authorization must be in writing, signed by the parent, guardian, judicial officer with jurisdiction over the minor, or a minor with legal power to consent. (See section VI.2 for discussion of when a minor’s consent is allowed.) The authorization must also comply with the specific laws governing the release of information of each participating agency.

The new legislation (Chapter 509) requires a single authorization form which should be developed in such a way as to allow the

appropriate consenting individual to refuse to release information or to modify the consent to limit the information released, the parties receiving the information, or how the information will be used. The family must

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be informed that participation in the ICSP will not be affected by the decision to withhold or limit the scope of information available to the child service team. If a parent does limit the information available to the ICSP it is the responsibility of the

child service team to develop strategies to provide services without the withheld information. The authorization remains in force as long as the child or family is a client of the ICSP or until modified by the appropriate individual authorized to give informed consent.

IV. Current Laws Affecting the Exchange of Information in an Integrated Children's Services Program

As discussed in the previous section, an ICSP is required to develop procedures which incorporate all the confidentiality obligations and penalties for wrongful disclosure that govern the exchange of information by each of the participating agencies. In other words, when a child and family participate in an ICSP they maintain all the privacy protections they would have if they were receiving services from the agencies but were not part of the ICSP. These protections must be included in the ICSP's Memorandum of Understanding and Authorization for Release of Records form. The specific rules governing participating agencies are discussed in this section and the actual statutes are included in **Appendix A**.

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Under the different codes each service sector has different rules regarding which specific information can be exchanged without client consent. Each agency also has specific requirements regarding the method of providing informed consent. It is important in developing a confidentiality procedure for the staff of an ICSP to be familiar with laws governing each of the following areas. Note that as a result of cumulative privacy and confidentiality protections, child, family, and third party access to specific information might be more limited than if the information were maintained by a single agency.

A. Health

Protection of confidentiality of information in all medical relationships is covered by the **Confidentiality of Medical Information Act (CMIA)** located in the California Civil Code beginning at Section 56. The CMIA is limited to the protection of “medical” information defined as “any individually identifiable information in possession of or derived from a provider of health care regarding a patient’s medical history.” Non-medical information therefore can be released. The CMIA also allows the release of the patient’s name, age, gender, address, general description of the reason for treatment, general nature of the injury or condition, and the patient’s general condition unless the patient requests in writing that the information not be disclosed.

In addition to the CMIA, health records are subject to the **Patients’ Access to Records** chapter of the California Health and Safety Code beginning at Section 123100. Pursuant to this chapter patients are entitled to copies or a summary of their records unless the release would entail a “substantial risk of significant adverse or detrimental consequences to the patient.”

B. Mental Health

Licensed mental health professionals are generally covered by the CMIA discussed above. When they are providing services, however, in the public mental health system or in a psychiatric facility the CMIA is superseded by the confidentiality provisions of the **Lanterman-Petris-Short Act (LPS)** found at Section 5328 of the California

Welfare and Institutions Code. The LPS provides a broader protection than the CMIA requiring that not just medical, but all information and records be confidential.

The LPS specifically allows for the exchange of confidential information in communications between qualified professional persons in the provision of services. Patient consent is required, however, before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care. For example, a hospital may release information to a patient's treating psychiatrist in the community, but must have client consent before providing information to a potential placement. In addition a patient may release information to any person as long as the mental health professional in charge of the patient approves. While the mental health professional is given discretion to generally approve or disapprove the release of information, in the case of release of

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information directly to the patient or patient representative, information can only be withheld if release would entail a “substantial risk of significant adverse or detrimental consequences to the patient.” (Health and Safety Code §123115)

C. Developmental Disabilities

The confidentiality rules for people with developmental disabilities are included in the **Lanterman Developmental Disabilities Services Act (Lanterman Act)** at Section 4514 of the California Welfare and Institutions Code. These provisions parallel the protections of LPS in the public mental health system. They also supersede the requirements of CMIA. The statute specifically requires client consent before information or records can be shared by regional center or state developmental center personnel to a professional not employed by the regional center or state developmental center or a program not vendored by a regional center or state developmental center. If a client, however, fails to grant or deny a request to release information and records within a reasonable period of time the information may be released if the release is deemed necessary to protect the client's health, safety or welfare, and the releasing agency has annually informed the client of this policy.

D. Drug and Alcohol Treatment

The primary source of confidentiality rules in the area of Drug and Alcohol treatment is the **Code of Federal Regulations (CFR)**. The section entitled, **Confidentiality of Alcohol and Drug Abuse Patient Records**, is found at 42 CFR, Part 2. These rules apply to records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any alcohol or drug abuse prevention or treatment program conducted, regulated, or directly or indirectly assisted by any federal department or agency. (One exception is Veterans Administration

programs which have their own rules.) **These regulations are the most precise confidentiality rules governing any sector of children’s services** and therefore to the extent that federally assisted drug and alcohol programs are to be part of the ICSP, **particular attention should be paid to incorporating these rules into the confidentiality policy of the ICSP.** Some of the key concepts include:

- **Disclosure** - a communication of patient identifying information, the affirmative verification of another person’s communication of patient identifying information, or the communication of any information from the record of a patient who has been identified.
- **Patient identifying information** - the name, address, Social Security number, fingerprints, photograph, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information.
- **Records** - any information, whether recorded or not, relating to a patient, received or acquired by a federally assisted drug and alcohol program.

It should be noted that the restrictions on disclosure do not apply to necessary communications between personnel in the same program. For this reason the recent California legislation (Chapter 509) declares that ICSPs are a single program for the purpose of these federal regulations. ICSP team members are therefore free to exchange information among themselves but are restricted by the regulations when

exchanging alcohol and drug abuse treatment information with others. Furthermore the redisclosure of covered information is prohibited unless the patient provides specific consent for that redisclosure. A general authorization for the release of medical or other information is not sufficient for this purpose. Further disclosure must be expressly permitted by the written consent of the person to whom it pertains.

Finally, these regulations require that written records must be maintained in a secure room, locked file cabinet, safe, or other similar container when not in use.

E. Education

Education confidentiality rules are found both in federal and state law. The state statute was drafted to comply with all federal requirements. A key element of the education code is the absolute right of parents to access any and all pupil records related to their children. **Pupil records** are defined as any

items of information directly related to an identifiable pupil which are maintained by a school district or employee. Pupil records may be shared with any person or agency

when the parent has executed a written consent. The recipient of the information must be notified, however, that it is prohibited to re-release the pupil information without written consent of the parent.

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Education Code Section 49602, however, provides that personal information disclosed by a pupil twelve years of age or older in the process of receiving counseling from a school counselor or information disclosed to the counselor by the pupil's parent or guardian is confidential and does not become part of the pupil record. This information can be shared with health care providers solely for the purpose of making a referral and in certain circumstances can be shared to avert danger. The information may also be reported to a third party pursuant to a written waiver of confidence signed by the pupil and preserved in the pupil's file. Confidential information shall not be released to the pupil's parents if the school counselor believes the disclosure would result in a clear and present danger to the health, safety or welfare of the child.

F. Juvenile Court

The juvenile court's general confidentiality rule is found in the California Welfare and Institutions Code at Section 827. The rule

prohibits the dissemination of any records or reports relative to a matter within the jurisdiction of the court prepared or released by the court, the probation department or the county child welfare agency except to the child's school district, child protection agencies, persons or agencies providing treatment or supervision of the minor, members of children's multidisciplinary teams, or any other agency or person designated by court order. Agencies or persons receiving this information are prohibited from further disseminating or attaching the records or reports to any other document without court order except to other agencies or persons authorized by this statute to receive the information. For the purposes of Welfare and Institutions Code §827, **a multidisciplinary team is a team of three or more qualified persons engaged in the prevention, identification and treatment of child abuse or members of a team engaged in the prevention, identification and control of juvenile crime.**

V. Implementation Steps

Many counties are currently developing integrated children’s services programs. As part of this process they must develop procedures for sharing information. The first steps involve defining membership in the ICSP, developing an understanding of the confidentiality requirements of each of the participants and then developing common policies and procedures complying with the laws discussed in this manual. At a minimum each ICSP must develop a Memorandum of Understanding (MOU) among the participating service providers and a format for obtaining informed consent for release of records. In addition protocols should be developed for establishing a unified services record, a common database, and a method for obtaining juvenile court consent for release of information for dependents and wards of the court.

A. Memorandum of Understanding

The MOU should specify the types of information that may be shared without informed consent (see section III.B.), the procedures for obtaining informed consent, and the process to be used to ensure the maximum protection of privacy and confidentiality rights. More specifically, the

“...the MOU should ensure that every member of the children’s services team who receives information on children and families served in the ICSP is bound by the same confidentiality obligations and subject to the same penalties as the person disclosing or providing the information.”

MOU should ensure that every member of the children’s services team who receives information on children and families served in the ICSP is bound by the same confidentiality obligations and subject to the same penalties as the person disclosing or providing the information.

The actual form of the MOU can vary greatly but must contain the essential components listed above. **Appendix B** contains a sample MOU developed by Tehama County along with other protocols. It should be noted that this MOU was developed prior to the recent changes in Welfare and Institutions Code §§18986.40 and 18986.46, which as discussed in this manual have significantly changed the framework for exchanging information in an ICSP. For that reason the Tehama County MOU relies more on the requirements for juvenile court multidisciplinary teams than is necessary under the new law. (See section VI.13.)

B. Informed Consent Agreement

Recently amended Welfare & Institutions Code §18986.46 requires a single written authorization providing known and informed consent to the exchange of confidential information among the agencies and other participants in the ICSP. A generic model form for interagency exchange of information has been developed by the Youth Law Center and is included, along with the Center’s discussion of the necessary elements of the form, in **Appendix C**.

It must be emphasized that **the written authorization must comply with the confidentiality laws governing each of the**

participating agencies discussed in section IV. It should also be noted that the statute specifically excludes the sharing of adoption records pursuant to the single authorization. Finally, any single consent form should accommodate the ability of the signer to limit the scope of authorization. This can be accomplished by allowing the signer to individualize the list of both providers and

recipients of information as well as the type of information to be released. The ICSP should consider developing a form with lists in each category which may be “checked” by the signer. Space should be allowed in which additional restrictions may be added. Sample consent forms are also included in the materials from Tehama County in **Appendix B.**

VI. Questions and Answers

1. When there are conflicting confidentiality laws which do you follow?

Unfortunately there is no unified confidentiality code. Each program and sometimes each funding source has its own confidentiality requirements. In navigating this maze there are a few general principles to follow. First, **when there are conflicts between federal and state laws in a federal or federally funded program, the federal laws prevail.** Second, **when there are conflicts between general confidentiality statutes and more specific program-based statutes, the more specific statutes prevail.** This is often clarified by legislative language at the beginning of the statute such as “notwithstanding any other provision of law...” Finally, because confidentiality is based on a constitutional right to privacy, **when there is a conflict between two statutes, the statute that best protects individual privacy generally prevails.** These principles are set forth in order of priority so, for example, even if you have a more general federal statute and a more specific state statute, the federal law prevails in a federally funded program.

2. When is a minor allowed to consent or not consent to the release of information?

A minor is the appropriate person to give informed consent for the release of confidential information for all treatment and services for which the minor has the authority to consent without parental approval. Oftentimes a minor’s ability to consent to treatment will depend on his or her age and maturity. California law specifically allows minors to consent to treatment in the following circumstances:

- a) Minors who have been emancipated may consent to treatment without parental consent or knowledge. (California Family Code §7050) Similarly, minors age 15 years or older, who have not been emancipated, may consent to medical care if they are living separate and apart from their parents or guardian and are managing their own financial affairs, regardless of the source of their income. (California Family Code §6922) In addition, a minor 12 years of age or over whom a service provider believes is mature enough to participate intelligently in outpatient mental health treatment may consent to treatment if the minor would present a danger of serious physical or mental harm without treatment, or if the minor is a victim of incest or child abuse. (California Family Code §6924)
- b) A minor 12 years of age or older can consent to “medical care and counseling related to the diagnosis and treatment of a drug or alcohol related problem” (this exception does not include replacement narcotic abuse treatment). (California Family Code §6929) Minors 12 years of age or older are also able to consent to treatment for communicable and sexually transmitted diseases and for treatment of conditions caused by rape. (California Family Code §6927) Minors of any age are able to consent to treatment of conditions caused by sexual assault. (California Family Code §6928) Minors who have been determined by the physician to have the capacity to

provide informed consent may also consent to an abortion without parental notification. (Academy of Pediatrics v. Lungren, California Supreme Court 1977)

- c) Finally, minors who are 16 years of age and older can petition (submit a written request to) the court for consent when no parent or guardian is available. (California Family Code §6911)

3. What are some of the special concerns for computerized information sharing?

Computerized information systems are on the verge of replacing traditional paper-based record keeping. As a result, information can be exchanged instantaneously with other agencies and shared databases can provide complete histories of services provided to a particular child or family. This information sharing can dramatically increase the effectiveness of an ICSP, but this increased access to information does not come without pitfalls. When all agency records were contained in one file in one office, protecting client confidentiality could be accomplished in a relatively simple way by protecting access to that file. As agencies began sharing their paper files with other agencies, it still remained relatively easy to protect confidentiality of files. As records are now being computerized and electronically shared, however, protecting access becomes a much more complex matter. Because computerized information can potentially be accessed from anywhere, **it is essential to develop adequate protocols to restrict access to information to only those individuals who are members of the child service team and only for the purpose of developing an interagency plan or providing service to a child or family.** This can be accomplished through the use of passwords, user logs which identify who has

accessed each record, and regular confidentiality audits which check for unauthorized access or use of information.

4. Are there particular problems when the child is a ward or dependent of the court and there is no parent to provide informed consent?

The authority to consent to the release of records to the child service team for wards and dependents of the court is specifically given to the judicial office with jurisdiction over the minor.

The sharing of information for these children may be facilitated by the issuance of a **blanket minute order** by the juvenile court, which would allow information protected by juvenile confidentiality statutes to be shared with the ICSP. Juvenile law also provides for child service teams engaged in the prevention, identification, and treatment of child abuse to exchange information relevant to this purpose. This statute has served as a basis for the exchange of information in an ICSP. (See section VI.13.)

5. Federal drug and alcohol confidentiality rules seem particularly stringent. How can drug and alcohol treatment workers participate in exchanging information in an interagency integrated children's services program?

Although federal drug and alcohol rules regarding disclosure of information are detailed and stringent, drug and alcohol information may be shared in an ICSP. Federal regulations, 42 Code of Federal Regulations Part 2, allow for the disclosure of individual records, pursuant to written informed consent of the individual to whom the record pertains or his or her parent, if a minor. The consent, as discussed above, must specify which information should be

released and to whom the records may be discharged. For example, a consent might request that all treatment records for a specific time period be disclosed or only that a particular report written on a certain date be released. A blanket consent will not be honored. The specific issue of redisclosure of information is discussed in section VI.9.

6. *What is the impact of sharing information on testimonial privilege?*

Testimonial privilege is the patient's right to keep confidential communications from being disclosed in legal proceedings. Not all confidential information is privileged. Only patient communications to physicians and certain specified mental health professionals are protected. Only the patient or client has the right to waive the privilege (i.e. **consent to disclosure**). Without consent the physician or therapist cannot testify regarding the confidential communications except in specified situations such as to protect a third party from danger. **If a patient consents to the disclosure of a privileged communication, at any time, the privilege is waived and the communication can no longer be protected from disclosure at a legal proceeding.**

Privilege is not waived, however, if the communication, including the diagnosis made and advice given, is shared because the disclosure is reasonably necessary in order to accomplish the purpose for which the psychotherapist was consulted. If a therapist, for example, is consulted because a child is acting out in the classroom and the therapist, with the family's consent, contacts the child's teacher and discusses information obtained from the child as well as the diagnosis made and advice given, privilege has arguably not been waived because the disclosure was reasonably necessary to impact the child's behavior in the classroom. The therapist could also be made a member

of the child services team pursuant to a provision that allows an individual to be a member of the team for a particular case. Membership on the team does not waive any right of privilege.

Similarly, privileged information released to an ICSP child service team would remain privileged so long as disclosure was reasonably necessary for the accomplishment of the purpose for which the physician or therapist was consulted. **If information is released more generally, however, the privileged nature of the information will be lost.** For this reason ICSP programs should be particularly careful regarding the exchange of privileged confidential communications.

7. *What is the impact on interagency information sharing when a child is being treated by a private therapist?*

In order to participate in the exchange of confidential information within the ICSP, a private therapist should be designated a member of the child service team for that particular child pursuant to Welfare & Institutions Code §18986.46(i). As a member of the team the therapist must be

“Individual therapists should always exercise their professional judgement regarding the release of confidential information and provide only that information that is necessary for the purposes of the child service team.”

trained in the confidentiality requirements governing the team and must agree to assume the responsibilities to protect privacy and confidentiality as set forth in the Memorandum of Understanding. Individual therapists should always exercise their professional judgement regarding the release of confidential information and provide only

that information that is necessary for the purposes of the child service team (i.e. developing a child service plan and providing services). It is also the therapist's responsibility to protect privileged information and release it only when there is clear consent by the client.

8. *How often must informed consent to share information be renewed?*

Requirements differ between programs regarding the term of an authorization for the release of information. The recent amendments to Welfare and Institutions Code §18986.46 allow the single authorization used within the ICSP to remain in effect as long as the child or family remains a client of the ICSP. ICSPs should consider periodic renewals of the authorization. This would provide the child and family with the opportunity to reactivate their specific decisions regarding the release of information and eliminate any potential misunderstandings. Federal drug and alcohol services regulations require that the written authorization also include a statement that the authorization may be revoked at any time.

9. *Is there any difference between an agency releasing its own records and releasing the records obtained from another agency?*

Agencies are not required to differentiate between records developed by the agency and records obtained from other agencies except when the records were obtained from a federally assisted alcohol or drug abuse prevention or treatment program, or when the records were received from the juvenile court, or the probation or child welfare agency. Federal drug and alcohol regulations prohibit the redisclosure of confidential information unless the redisclosure is expressly permitted by written consent of the person to whom it

pertains. Redisclosure of juvenile records in certain circumstances requires a court order (see section IV.F.). It should be noted that while team members of an ICSP can freely share information, the restrictions on redisclosure apply when the child service team is requested to share information with an outside agency.

10. *When does a parent-run advocacy program under contract with the county mental health department have access to mental health information?*

In response to a **basic tenet of the Children's System of Care philosophy - that services be family-centered** - many counties have developed parent-run advocacy and support programs which provide assistance to individual families as well as leadership as partners in the operation and policy development of the ICSP. In some models parent advocates are assigned to each child service team. If the parent advocate meets the requirements of team membership, he or she is entitled to the same access to information as all other members of the team.

To be a team member the parent advocate must be qualified to provide a service which will

“If the parent advocate meets the requirements of team membership, he or she is entitled to the same access to information as all other members of the team.”

enhance the health, development, and well-being of children and their families. Because parent advocates bring an important perspective to the development of a child service plan and the provision of services, and because their support of a family is oftentimes invaluable, they clearly enhance the well-being of children and their families.

In order to be a member of the child service team, a parent advocate must also be appropriately trained. Training would include the skills and knowledge they would need to be an effective advocate. Parent

“Because parent advocates bring an important perspective to the development of a child service plan and the provision of services, and because their support of a family is oftentimes invaluable, they clearly enhance the well-being of children and their families.”

advocates, like all members of the team, must also be trained in the applicable rules of confidentiality.

11. Can client information be shared informally between agency partners for a child not currently part of the System of Care?

A clear advantage of an ICSP model is the development of cooperative working relationships between staff of different agencies. These relationships are beneficial to all children and families served by the agencies, not just participants in the ICSP. Information about programs can be shared freely between staff. Confidential client information, however, can only be shared if the child or family is formally participating in the ICSP or if there is a written consent to share information. **No matter how efficient it is to share information informally, exchanging confidential information without appropriate authorization is unlawful. Policies, protocols and trainings focused on exchange of information should emphasize that this type of exchange is prohibited.**

12. How can client-specific outcomes be shared with a funding source?

A database may be maintained by an ICSP, which includes both demographic and client-specific information. Client information may include service information, as well as outcomes. This information may be shared for the purpose of evaluation as long as individual clients cannot be identified through the information shared. This evaluation may be shared with the funding source.

13. Is sharing information through child abuse multidisciplinary teams an acceptable alternative to sharing information through ICSPs?

The juvenile law does provide an alternative for exchanging information among agencies working with children who have been victims of child abuse and neglect. **The child abuse multidisciplinary teams can exchange information without the informed consent or Memorandum of Understanding that is required in an ICSP.** Welfare and Institutions Code §18951, however, limits multidisciplinary team membership to individuals who are trained in the prevention, identification and treatment of child abuse and neglect cases and who are qualified to provide a broad range of services related to child abuse. Welfare and Institutions Code §830 further limits the information that can be exchanged to only information and writings related to incidents of child abuse which are believed to be generally relevant to the prevention, identification, or treatment of child abuse.

Because of these limitations, the framework for exchange of information in an ICSP established by Welfare and Institutions Code §§18986.40 and 18986.46 allows for greater flexibility in the composition of the child service teams as well as the exchange of a much broader range of information.

APPENDIX

APPENDIX A

Statutes

BILL NUMBER: AB 1801 CHAPTERED
BILL TEXT

CHAPTER 509
FILED WITH SECRETARY OF STATE SEPTEMBER 15, 1998
APPROVED BY GOVERNOR SEPTEMBER 15, 1998
PASSED THE ASSEMBLY AUGUST 11, 1998
PASSED THE SENATE AUGUST 6, 1998
AMENDED IN SENATE JUNE 25, 1998
AMENDED IN ASSEMBLY MAY 22, 1998
AMENDED IN ASSEMBLY APRIL 22, 1998
AMENDED IN ASSEMBLY APRIL 13, 1998

INTRODUCED BY Assembly Member Davis

FEBRUARY 10, 1998

An act to amend Sections 18986.40 and 18986.46 of the Welfare and Institutions Code, relating to human services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1801, Davis. Children's services.

Existing law permits local entities to establish integrated children's services programs, as defined, to provide children's services.

Existing law authorizes children's multidisciplinary services teams to disclose to one another information and view records pertaining to a child and his or her family necessary to formulate an integrated services plan or to deliver services to children and their families.

This bill would also define an integrated children's services program as a coordinated children's service system, operating as a program that is part of a State Department of Social Services or State Department of Mental Health initiative, that offers a full range of behavioral, social, health, and medical services to seriously emotionally disturbed and special needs children.

The bill would also enact various provisions governing the provision of services under, and the sharing and use of information and records by, an integrated children's services program.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 18986.40 of the Welfare and Institutions Code is amended to read:

18986.40. (a) For the purposes of this chapter, "program" or "integrated children's services programs" means a coordinated children's service system, operating as a program that is part of a department or State Department of Mental Health initiative, that offers a full range of integrated behavioral social, health, and mental health services, including applicable educational services, to seriously emotionally disturbed and special needs children, or programs established by county governments, local education agencies, or consortia of public and private agencies, to jointly provide two or more of the following services to children or their families, or both:

- (1) Educational services for children at risk of dropping out, or who need additional educational services to be successful academically.
- (2) Health care.
- (3) All mental health diagnostic and treatment services, including medication.
- (4) Substance abuse prevention and treatment.
- (5) Child abuse prevention, identification, and treatment.
- (6) Nutrition services.
- (7) Child care and development services.
- (8) Juvenile justice services.
- (9) Child welfare services.
- (10) Early intervention and prevention services.
- (11) Crisis intervention services, as defined in subdivision (c).
- (12) Any other service which will enhance the health, development, and well-being of children and their families.

(b) For the purposes of this chapter, “children’s multidisciplinary services team” means a team of two or more persons trained and qualified to provide one or more of the services listed in subdivision (a), who are responsible in the program for identifying the educational, health, or social service needs of a child and his or her family, and for developing a plan to address those needs. A family member, or the designee of a family member, shall be invited to participate in team meetings and decisions, unless the team determines that, in its professional judgment, this participation would present a reasonable risk of a significant adverse or detrimental effect on the minor’s psychological or physical safety. Members of the team shall be trained in the confidentiality and information sharing provisions of this chapter.

(c) “Crisis intervention services” means early support and psychological assistance, to be continued as necessary, to children who have been victims of, or whose lives have been affected by, a violent crime or a cataclysmic incident, such as a natural disaster, or who have been involved in school, neighborhood, or family based critical incidents likely to cause profound psychological effects if not addressed immediately and thoroughly.

SEC. 2. Section 18986.46 of the Welfare and Institutions Code is amended to read:

18986.46. (a) A program shall utilize children’s multidisciplinary services teams, as defined in this chapter.

(b) A team member shall provide program services only as employed by, under contract with, or otherwise affiliated with, the program, and shall not share information, or provide program services, when acting as a separate local, state, or private agency or entity.

(c) A program shall be considered a single program for purposes of federal substance abuse program regulations contained in Part 2 (commencing with Section 2.1) of Title 42 of the Code of Federal Regulations.

(d) Notwithstanding any other provision of law regarding disclosure of information and records, a program shall be permitted to establish a unified services record for a child and family. That record shall contain all records of prior services that are released to the program and that are relevant and necessary to formulate an integrated services plan, pursuant to valid written authorizations, as well as a record of all service provided under the program.

(e) Notwithstanding any other provision of law regarding disclosure of information and records, when a child enters the program a parent, guardian, judicial officer with jurisdiction over the minor, or a minor with legal power to consent, shall be asked to sign a single authorization that gives a knowing and informed consent, in writing, and that complies with all other

applicable provisions of state law governing release of medical, mental health, social service, and educational records, and that covers multiple service providers, in order to permit the release of records to the program. This single authorization shall not include adoption records. The authorized representative of the child, or the child in a case where he or she has the legal right to consent, shall be fully apprised of the requirements of this subdivision prior to participation in the program. Before information may be exchanged about a particular child or family pursuant to this chapter, a representative of the program shall do all of the following:

(1) Explain to the authorized representative of the child, or the child in a case where he or she has the legal right to consent, both of the following, and this explanation shall be given before any information about the child or family is recorded and before any services are provided:

(A) Information provided by the child or family may only be exchanged within the program with the express written consent of the authorized representative.

(B) Information shall not be disclosed to anyone other than members of the multidisciplinary children's services team, and those qualified to receive information as explained in subdivision (i).

(2) The authorized representative of the child, or the child in a case where he or she has the legal right to consent, shall be informed that he or she has a right to refuse to sign, or to limit the scope of, the consent form, and that a refusal to sign, or to limit the scope of, the consent form will not have an adverse impact on the client's eligibility for services under the programs described in this chapter.

(f) The knowing and informed consent given pursuant to this chapter shall only be in force for the time that the child or family is a client of the program.

(g) (1) Notwithstanding any provision of state law governing the disclosure of information and records, persons who are trained, qualified, and assigned by their respective agencies to serve on teams within a program and other team members included pursuant to this chapter may view relevant sections of unified program records and may disclose to one another relevant information and view records on a child or the child's family as necessary to formulate an integrated services plan or to deliver services to children and their families.

(2) This information and records may include information relevant to the evaluation of the child and his or her family, the development of a treatment plan for the child and his or her family, and the delivery of services. Relevant information and records shall be shared with family members or family designees on the team, except information or records, if any, disclosure of which the team determines would present a reasonable risk of a significant adverse or detrimental effect on the minor's psychological or physical safety.

(h) (1) If the members of a multidisciplinary services team within an integrated children's services program require records held by other team members, copies may be provided to them.

(2) Notwithstanding any other provisions of law regarding disclosure of information and records, a program may establish and maintain a common data base for the purpose of delivering services under the program. The data base may contain demographic data and may identify the services recommended for, and provided to, a child and his or her family by the program. The data base shall be for use and disclosure only within the program, except by properly authorized consent by a parent, guardian, judicial officer with jurisdiction over the child, or a minor with the legal power to consent.

(3) The program may authorize use of information contained in the data base for bona fide evaluation and research purposes, unless otherwise prohibited by law. No information disclosed under this paragraph shall permit identification of the individual patient or client. The release of

copies of mental health records, physical health records, and drug or alcohol records in programs establishing a unified services record shall be governed by the single authorization of informed and knowing consent to release these records. In programs not establishing a unified services record and not utilizing the single authorization of informed and knowing consent, release of these records may take place only after the team has received a form permitting release of records on the child or the child's family, signed by the child, to the extent the records were generated as a result of health care services to which the child has the power to consent under state law, or, to the extent that the records have not been generated by the provision of these health care services, by the child's parent, guardian, or legal representative, including the court which has jurisdiction over those children who are wards or dependents of the court.

(i) The multidisciplinary team may designate persons qualified pursuant to Section 18986.40 to be a member of the team for a particular case. A person designated as a team member pursuant to this subdivision may receive and disclose relevant information and records, subject to the confidentiality provisions of subdivision (k).

(j) The sharing of information permitted under subdivision (g) shall be governed by memoranda of understanding among the participating service providers or agencies in the coordinated children's service system or program. These memoranda shall specify the types of information that may be shared without a signed release form, in accordance with subdivision (e), and the process to be used to ensure that current confidentiality requirements, as described in subdivision (k), are met. This paragraph shall not be construed to waive any right of privilege contained in the Evidence Code, except in compliance with Section 912 of that code.

(k) Every member of the children's multidisciplinary services team who receives information or records on children and families served in the integrated children's services program shall be under the same privacy and confidentiality obligations and subject to the same confidentiality penalties as the person disclosing or providing the information or records. The information or records obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(l) This section shall not be construed to restrict guarantees of confidentiality provided under federal law.

(m) Information and records communicated or provided to the program, by all providers, programs, and agencies, as well as information and records created by the program in the course of serving its children and their families, shall be deemed private and confidential and shall be protected from discovery and disclosure by all applicable statutory and common law protections. Civil and criminal penalties shall apply to the inappropriate disclosure of information held by the program. Nothing in this section shall be construed to affect the authority of a health care provider to disclose medical information pursuant to paragraph (1) of subdivision (c) of Section 56.10 of the Civil Code.

CALIFORNIA CODES
EDUCATION CODE
SECTION 49069

49069. Parents of currently enrolled or former pupils have an absolute right to access to any and all pupil records related to their children which are maintained by school districts or private schools. The editing or withholding of any such records, except as provided for in this chapter, is prohibited.

Each school district shall adopt procedures for the granting of requests by parents for copies of all pupil records pursuant to Section 49065, or to inspect and review records during regular school hours, provided that the requested access shall be granted no later than five days following the date of the request. Procedures shall include the notification to the parent of the location of all official pupil records if not centrally located and the availability of qualified certificated personnel to interpret records where requested.

CALIFORNIA CODES
WELFARE AND INSTITUTIONS CODE
SECTION 4514

4514. All information and records obtained in the course of providing intake, assessment, and services under Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) to persons with developmental disabilities shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons, whether employed by a regional center or state developmental center, or not, in the provision of intake, assessment, and services or appropriate referrals. The consent of the person with a developmental disability, or his or her guardian or conservator, shall be obtained before information or records may be disclosed by regional center or state developmental center personnel to a professional not employed by the regional center or state developmental center, or a program not vendored by a regional center or state developmental center.

(b) When the person with a developmental disability, who has the capacity to give informed consent, designates individuals to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, marriage, family, and child counselor, nurse, attorney, or other professional to reveal information which has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(c) To the extent necessary for a claim, or for a claim or application to be made on behalf of a person with a developmental disability for aid, insurance, government benefit, or medical assistance to which he or she may be entitled.

(d) If the person with a developmental disability is a minor, ward, or conservatee, and his or her parent, guardian, conservator, or limited conservator with access to confidential records, designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, marriage, family, and child counselor, nurse, attorney, or other professional to reveal information which has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(e) For research, provided that the Director of Developmental Services designates by regulation rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. These rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

“ _____
Date

As a condition of doing research concerning persons with developmental disabilities who have received services from ____ (fill in the facility, agency or person), I, _____, agree to obtain the prior informed consent of persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human

subjects reviewing my research, or the person’s parent, guardian, or conservator, and I further agree not to divulge any information obtained in the course of the research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services so those persons who received services are identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

Signed

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Senate Rules Committee or the Assembly Rules Committee for the purposes of legislative investigation authorized by the committee.

(i) To the courts and designated parties as part of a regional center report or assessment in compliance with a statutory or regulatory requirement, including, but not limited to, Section 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the Penal Code, Section 6502 of the Welfare and Institutions Code, and Section 56557 of Title 17 of the California Code of Regulations.

(j) To the attorney for the person with a developmental disability in any and all proceedings upon presentation of a release of information signed by the person, except that when the person lacks the capacity to give informed consent, the regional center or state developmental center director or designee, upon satisfying himself or herself of the identity of the attorney, and of the fact that the attorney represents the person, shall release all information and records relating to the person except that nothing in this article shall be construed to compel a physician, psychologist, social worker, marriage, family, and child counselor, nurse, attorney, or other professional to reveal information which has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(k) Upon written consent by a person with a developmental disability previously or presently receiving services from a regional center or state developmental center, the director of the regional center or state developmental center, or his or her designee, may release any information, except information which has been given in confidence by members of the family of the person with developmental disabilities, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the regional center or state developmental center director or designee determines that the information is relevant to the evaluation. The consent shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(l) Between persons who are trained and qualified to serve on “multidisciplinary personnel” teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) When a person with a developmental disability dies from any cause, natural or otherwise, while hospitalized in a state developmental center, the State Department of Developmental Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall release information and records to the coroner. The State Department of Developmental Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall not release any notes, summaries, transcripts, tapes, or records of conversations between the resident and health professional personnel of the hospital relating to the personal life of the resident which is not related to the diagnosis and treatment of the resident's physical condition. Any information released to the coroner pursuant to this section shall remain confidential and shall be sealed and shall not be made part of the public record.

(n) To authorized licensing personnel who are employed by, or who are authorized representatives of, the State Department of Health Services, and who are licensed or registered health professionals, and to authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate health facilities and community care facilities, and to ensure that the standards of care and services provided in such facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facility is subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 2 (commencing with Section 1250) and Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Health Services or the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names which are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Health Services or the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Health Services or the State Department of Social Services shall not contain the name of the person with a developmental disability.

(o) To any board which licenses and certifies professionals in the fields of mental health and developmental disabilities pursuant to state law, when the Director of Developmental Services has reasonable cause to believe that there has occurred a violation of any provision of law subject to the jurisdiction of a board and the records are relevant to the violation. The information shall be sealed after a decision is reached in the matter of the suspected violation, and shall not subsequently be released except in accordance with this subdivision. Confidential information in the possession of the board shall not contain the name of the person with a developmental disability.

(p) To governmental law enforcement agencies by the director of a regional center or state developmental center, or his or her designee, when (1) the person with a developmental disability has been reported lost or missing; or (2) there is probable cause to believe that a person with a

developmental disability has committed, or has been the victim of, murder, manslaughter, mayhem, aggravated mayhem, kidnapping, robbery, carjacking, assault with the intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, assault or battery, or unlawful possession of a weapon, as provided in Section 12020 of the Penal Code.

This subdivision shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating to the mental state of the patient or the circumstances of his or her treatment unless relevant to the crime involved.

This subdivision shall not be construed as an exception to, or in any other way affecting, the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, or Chapter 11 (commencing with Section 15600) and Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(q) To the Youth Authority and Adult Correctional Agency or any component thereof, as necessary to the administration of justice.

(r) To an agency mandated to investigate a report of abuse filed pursuant to either Section 11164 of the Penal Code or Section 15630 of the Welfare and Institutions Code for the purposes of either a mandated or voluntary report or when those agencies request information in the course of conducting their investigation.

(s) When a person with developmental disabilities, or the parent, guardian, or conservator of a person with developmental disabilities who lacks capacity to consent, fails to grant or deny a request by a regional center or state developmental center to release information or records relating to the person with developmental disabilities within a reasonable period of time, the director of the regional or developmental center, or his or her designee, may release information or records on behalf of that person provided both of the following conditions are met:

(1) Release of the information or records is deemed necessary to protect the person's health, safety, or welfare.

(2) The person, or the person's parent, guardian, or conservator, has been advised annually in writing of the policy of the regional center or state developmental center for release of confidential client information or records when the person with developmental disabilities, or the person's parent, guardian, or conservator, fails to respond to a request for release of the information or records within a reasonable period of time. A statement of policy contained in the client's individual program plan shall be deemed to comply with the notice requirement of this paragraph.

4514.3. (a) Notwithstanding Section 4514, information and records may be disclosed to the protection and advocacy agency designated by the Governor in this state to fulfill the requirements and assurances of the federal Developmental Disabilities Assistance and Bill of Rights Act, contained in Chapter 75 (commencing with Section 6000) of Title 42 of the United States Code, for the protection and advocacy of the rights of persons with developmental disabilities, as defined in Section 6001(5) of Title 42 of the United States Code.

(b) Access to information and records to which subdivision (a) applies shall be in accord with Division 4.7 (commencing with Section 4900).

CALIFORNIA CODES
WELFARE AND INSTITUTIONS CODE
SECTION 5328

5328. All information and records obtained in the course of providing services under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings. The consent of the patient, or his or her guardian or conservator shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care.

(b) When the patient, with the approval of the physician, licensed psychologist, or social worker with a master's degree in social work, who is in charge of the patient, designates persons to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him or her in confidence by members of a patient's family.

(c) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(d) If the recipient of services is a minor, ward, or conservatee, and his or her parent, guardian, guardian ad litem, or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him or her in confidence by members of a patient's family.

(e) For research, provided that the Director of Mental Health or the Director of Developmental Services designates by regulation, rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. The rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

Date

As a condition of doing research concerning persons who have received services from ____ (fill in the facility, agency or person), I, ____, agree to obtain the prior informed consent of such persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, and I further agree not to divulge any information obtained in the course of such research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Committee on Senate Rules or the Committee on Assembly Rules for the purposes of legislative investigation authorized by the committee.

(i) If the recipient of services who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.

(j) To the attorney for the patient in any and all proceedings upon presentation of a release of information signed by the patient, except that when the patient is unable to sign the release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the patient, may release all information and records relating to the patient except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(k) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the facility or his or her designee may release any information, except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the professional person in charge of the facility determines that the information is relevant to the evaluation. The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(l) Between persons who are trained and qualified to serve on "multidisciplinary personnel" teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) To county patients' rights advocates who have been given knowing voluntary authorization by a client or a guardian ad litem. The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate.

(n) To a committee established in compliance with Sections 4070 and 5624.

(o) In providing information as described in Section 7325.5. Nothing in this subdivision shall permit the release of any information other than that described in Section 7325.5.

(p) To the county mental health director or the director's designee, or to a law enforcement officer, or to the person designated by a law enforcement agency, pursuant to Sections 5152.1 and 5250.1.

(q) If the patient gives his or her consent, information specifically pertaining to the existence of genetically handicapping conditions, as defined in Section 341.5 of the Health and Safety Code, may be released to qualified professional persons for purposes of genetic counseling for blood relatives upon request of the blood relative. For purposes of this subdivision, "qualified

professional persons” means those persons with the qualifications necessary to carry out the genetic counseling duties under this subdivision as determined by the genetic disease unit established in the State Department of Health Services under Section 309 of the Health and Safety Code. If the patient does not respond or cannot respond to a request for permission to release information pursuant to this subdivision after reasonable attempts have been made over a two-week period to get a response, the information may be released upon request of the blood relative.

(r) When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies as the psychotherapist determines is needed for the protection of that person or persons. For purposes of this subdivision, “psychotherapist” means anyone so defined within Section 1010 of the Evidence Code.

(s) To persons serving on an interagency case management council established in compliance with Section 5606.6 to the extent necessary to perform its duties. This council shall attempt to obtain the consent of the client. If this consent is not given by the client, the council shall justify in the client’s chart why these records are necessary for the work of the council.

(t) (1) To the designated officer of an emergency response employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with provisions of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(2) For purposes of this subdivision, “designated officer” and “emergency response employee” have the same meaning as these terms are used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(3) The designated officer shall be subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV test results.

(u) (1) To a law enforcement officer who personally lodges with a facility, as defined in paragraph (2), a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a serious felony, as defined in Section 1192.7 of the Penal Code, or a violent felony, as defined in Section 667.5 of the Penal Code. The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This paragraph shall be implemented with minimum disruption to health facility operations and patients, in accordance with Section 5212. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility. (2) For purposes of paragraph (1), a facility means all of the following:

- (A) A state hospital, as defined in Section 4001.
- (B) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, solely with regard to information pertaining to a mentally disordered person subject to this section.
- (C) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

- (D) A psychiatric health facility, as described in Section 1250.2 of the Health and Safety Code.
- (E) A mental health rehabilitation center, as described in Section 5675.
- (F) A skilled nursing facility with a special treatment program for chronically mentally disordered patients, as described in Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the California Code of Regulations.

The amendment of subdivision (d) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

5328.01. Notwithstanding Section 5328, all information and records made confidential under the first paragraph of Section 5328 shall also be disclosed to governmental law enforcement agencies investigating evidence of a crime where the records relate to a patient who is confined or has been confined as a mentally disordered sex offender or pursuant to Section 1026 or 1368 of the Penal Code and the records are in the possession or under the control of any state hospital serving the mentally disabled, as follows:

- (a) In accordance with the written consent of the patient; or
- (b) If authorized by an appropriate order of a court of competent jurisdiction in the county where the records are located compelling a party to produce in court specified records and specifically describing the records being sought, when the order is granted after an application showing probable cause therefor. In assessing probable cause, the court shall do all of the following:
 - (1) Weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services.
 - (2) Determine that there is a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution.
 - (3) Determine that the crime involves the causing of, or direct threatening of, the loss of life or serious bodily injury.
 - (4) In granting or denying a subpoena, the court shall state on the record the reasons for its decision and the facts which the court considered in making such a ruling.
 - (5) If a court grants an order permitting disclosure of such records, the court shall issue all orders necessary to protect, to the maximum extent possible, the patient's privacy and the privacy and confidentiality of the physician-patient relationship.
 - (6) Any records disclosed pursuant to the provisions of this subdivision and any copies thereof shall be returned to the facility at the completion of the investigation or prosecution unless they have been made a part of the court record.
- (c) A governmental law enforcement agency applying for disclosure of patient records under this subdivision may petition the court for an order, upon a showing of probable cause to believe that delay would seriously impede the investigation, which requires the ordered party to produce the records forthwith.
- (d) Records obtained by a governmental law enforcement agency pursuant to this section shall not be disseminated to any other agency or person unless such dissemination relates to the criminal investigation for which the records were obtained by the governmental law enforcement agency. The willful dissemination of any record in violation of this paragraph shall constitute a misdemeanor.
- (e) If any records obtained pursuant to this section are of a patient presently receiving

treatment at the state hospital serving the mentally disabled, the law enforcement agency shall only receive copies of the original records.

5328.02 Notwithstanding Section 5328, all information and records made confidential under the first paragraph of Section 5328 shall also be disclosed to the Youth Authority and Adult Correctional Agency or any component thereof, as necessary to the administration of justice.

5328.05. (a) Notwithstanding Section 5328, information and records may be disclosed when an older adult client, in the opinion of a designee of a human service agency serving older adults through an established multidisciplinary team, presents signs or symptoms of elder abuse or neglect, whether inflicted by another or self-inflicted, the agency designee to the multidisciplinary team may, with the older adult's consent, obtain information from other county agencies regarding, and limited to, whether or not a client is receiving services from any other county agency.

(b) The information obtained pursuant to subdivision (a) shall not include information regarding the nature of the treatment or services provided, and shall be shared among multidisciplinary team members for multidisciplinary team activities pursuant to this section.

(c) The county agencies which may cooperate and share information under this section shall have staff designated as members of an established multidisciplinary team, and include, but not be limited to, the county departments of public social services, health, mental health, and alcohol and drug abuse, the public guardian, and the area agencies on aging.

(d) The county patient's rights advocate shall report any negative consequences of the implementation of this exception to confidentiality requirements to the local mental health director.

5328.06. (a) Notwithstanding Section 5328, information and records may be disclosed to the protection and advocacy agency established in this state to fulfill the requirements and assurances of the federal Protection and Advocacy for the Mentally Ill Individuals Act of 1986, as amended, contained in Chapter 114 (commencing with Section 10801) of Title 42 of the United States Code, for the protection and advocacy of the rights of individuals identified as mentally ill, as defined in Section 10802(3) of Title 42 of the United States Code.

(b) Access to information and records to which subdivision (a) applies shall be in accord with Division 4.7 (commencing with Section 4900).

5328.1. (a) Upon request of a member of the family of a patient, or other person designated by the patient, a public or private treatment facility shall give the family member or the designee notification of the patient's diagnosis, the prognosis, the medications prescribed, the side effects of medications prescribed, if any, and the progress of the patient, if, after notification of the patient that this information is requested, the patient authorizes its disclosure. If, when initially informed of the request for notification, the patient is unable to authorize the release of such information, notation of the attempt shall be made into the patient's treatment record, and daily efforts shall be made to secure the patient's consent or refusal of authorization. However, if a request for information is made by the spouse, parent, child, or sibling of the patient and the patient is unable to authorize the release of such information, the requester shall be given notification of the patient's presence in the facility, except to the extent prohibited by federal law.

(b) Upon the admission of any mental health patient to a 24-hour public or private health

facility licensed pursuant to Section 1250 of the Health and Safety Code, the facility shall make reasonable attempts to notify the patient's next of kin or any other person designated by the patient, of the patient's admission, unless the patient requests that this information not be provided. The facility shall make reasonable attempts to notify the patient's next of kin or any other person designated by the patient, of the patient's release, transfer, serious illness, injury, or death only upon request of the family member, unless the patient requests that this information not be provided. The patient shall be advised by the facility that he or she has the right to request that this information not be provided.

(c) No public or private entity or public or private employee shall be liable for damages caused or alleged to be caused by the release of information or the omission to release information pursuant to this section. Nothing in this section shall be construed to require photocopying of a patient's medical records in order to satisfy its provisions.

5328.15. All information and records obtained in the course of providing services under Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7000), to either voluntary or involuntary recipients of services shall be confidential. Information and records may be disclosed, however, notwithstanding any other provision of law, as follows:

(a) To authorized licensing personnel who are employed by, or who are authorized representatives of, the State Department of Health Services, and who are licensed or registered health professionals, and to authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate health facilities and community care facilities and to ensure that the standards of care and services provided in such facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facility is subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 2 (commencing with Section 1250) of, and Chapter 3 (commencing with Section 1500) of, Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Health Services or the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names which are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Health Services or the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Health Services or the State Department of Social Services shall not contain the name of the patient.

(b) To any board which licenses and certifies professionals in the fields of mental health pursuant to state law, when the Director of Mental Health has reasonable cause to believe that there has occurred a violation of any provision of law subject to the jurisdiction of that board and the records are relevant to the violation. This information shall be sealed after a decision is reached in the matter of the suspected violation, and shall not subsequently be released except in

accordance with this subdivision. Confidential information in the possession of the board shall not contain the name of the patient.

5328.2. Notwithstanding Section 5328, movement and identification information and records regarding a patient who is committed to the department, state hospital, or any other public or private mental health facility approved by the county mental health director for observation or for an indeterminate period as a mentally disordered sex offender, or for a person who is civilly committed as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6, or regarding a patient who is committed to the department, to a state hospital, or any other public or private mental health facility approved by the county mental health director under Section 1026 or 1370 of the Penal Code or receiving treatment pursuant to Section 5300 of this code, shall be forwarded immediately without prior request to the Department of Justice. Except as otherwise provided by law, information automatically reported under this section shall be restricted to name, address, fingerprints, date of admission, date of discharge, date of escape or return from escape, date of any home leave, parole or leave of absence and, if known, the county in which the person will reside upon release. The Department of Justice may in turn furnish information reported under this section pursuant to Section 11105 or 11105.1 of the Penal Code. It shall be a misdemeanor for recipients furnished with this information to in turn furnish the information to any person or agency other than those specified in Section 11105 or 11105.1 of the Penal Code.

CALIFORNIA CODES
WELFARE AND INSTITUTIONS CODE
SECTION 10850

10850. (a) Except as otherwise provided in this section, all applications and records concerning any individual made or kept by any public officer or agency in connection with the administration of any provision of this code relating to any form of public social services for which grants-in-aid are received by this state from the United States government shall be confidential, and shall not be open to examination for any purpose not directly connected with the administration of that program, or any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such program. The disclosure of any information which identifies by name or address any applicant for or recipient of these grants-in-aid to any committee or legislative body is prohibited, except as provided in subdivision (b).

(b) Except as otherwise provided in this section, no person shall publish or disclose or permit or cause to be published or disclosed any list of persons receiving public social services. Any county welfare department in this state may release lists of applicants for, or recipients of, public social services, to any other county welfare department or the State Department of Social Services, and these lists or any other records shall be released when requested by any county welfare department or the State Department of Social Services. These lists or other records shall only be used for purposes directly connected with the administration of public social services. Except for those purposes, no person shall publish, disclose, or use or permit or cause to be published, disclosed, or used any confidential information pertaining to an applicant or recipient.

Any county welfare department and the State Department of Social Services shall provide any governmental entity which is authorized by law to conduct an audit or similar activity in connection with the administration of public social services, including any committee or legislative body so authorized, with access to any public social service applications and records described in subdivision (a) to the extent of the authorization. Those committees, legislative bodies and other entities may only request or use these records for the purpose of investigating the administration of public social services, and shall not disclose the identity of any applicant or recipient except in the case of a criminal or civil proceeding conducted in connection with the administration of public social services.

However, this section shall not prohibit the furnishing of this information to other public agencies to the extent required for verifying eligibility or for other purposes directly connected with the administration of public social services, or to county superintendents of schools or superintendents of school districts only as necessary for the administration of federally assisted programs providing assistance in cash or in-kind or services directly to individuals on the basis of need. Any person knowingly and intentionally violating this subdivision is guilty of a misdemeanor.

Further, in the context of a petition for the appointment of a conservator for a person who is receiving or has received aid from a public agency, as indicated above, or in the context of a criminal prosecution for a violation of Section 368 of the Penal Code both of the following shall apply:

(1) An Adult Protective Services employee or Ombudsman may answer truthfully at any proceeding related to the petition or prosecution, when asked if he or she is aware of information that he or she believes is related to the legal mental capacity of that aid recipient or the need for a

conservatorship for that aid recipient. If the Adult Protective Services employee or Ombudsman states that he or she is aware of such information, the court may order the Adult Protective Services employee or Ombudsman to testify about his or her observations and to disclose all relevant agency records.

(2) The court may order the Adult Protective Services employee or Ombudsman to testify about his or her observations and to disclose any relevant agency records if the court has other independent reason to believe that the Adult Protective Services employee or Ombudsman has information that would facilitate the resolution of the matter.

(c) The State Department of Social Services may make rules and regulations governing the custody, use, and preservation of all records, papers, files, and communications pertaining to the administration of the laws relating to public social services under their jurisdiction. The rules and regulations shall be binding on all departments, officials and employees of the state, or of any political subdivision of the state and may provide for giving information to or exchanging information with agencies, public or political subdivisions of the state, and may provide for giving information to or exchanging information with agencies, public or private, which are engaged in planning, providing or securing social services for or in behalf of recipients or applicants; and for making case records available for research purposes, provided, that the research will not result in the disclosure of the identity of applicants for or recipients of public social services.

(d) Any person, including every public officer and employee, who knowingly secures or possesses, other than in the course of official duty, an official list or a list compiled from official sources, published or disclosed in violation of this section, of persons who have applied for or who have been granted any form of public social services for which state or federal funds are made available to the counties is guilty of a misdemeanor.

(e) This section shall not be construed to prohibit an employee of a county welfare department from disclosing confidential information concerning a public social services applicant or recipient to a state or local law enforcement agency investigating or gathering information regarding a criminal act committed in a welfare department office, a criminal act against any county or state welfare worker, or any criminal act witnessed by any county or state welfare worker while involved in the administration of public social services at any location. Further, this section shall not be construed to prohibit an employee of a county welfare department from disclosing confidential information concerning a public social services applicant or recipient to a state or local law enforcement agency investigating or gathering information regarding a criminal act intentionally committed by the applicant or recipient against any off-duty county or state welfare worker in retaliation for an act performed in the course of the welfare worker's duty when the person committing the offense knows or reasonably should know that the victim is a state or county welfare worker. These criminal acts shall include only those which are in violation of state or local law. Disclosure of confidential information pursuant to this subdivision shall be limited to the applicant's or recipient's name, physical description, and address.

(f) The provisions of this section shall be operative only to the extent permitted by federal law and shall not apply to, but exclude, Chapter 7 (commencing with Section 14000) of this division, entitled "Basic Health Care", and for which a grant-in-aid is received by the state under Title XIX of the Social Security Act.

10850.1. Notwithstanding any other provision of law, for purposes of Section 10850, the activities of a multidisciplinary personnel team engaged in the prevention, identification, and

treatment of child abuse or the abuse of elder or dependent persons are activities performed in the administration of public social services, and a member of the team may disclose and exchange any information or writing that also is kept or maintained in connection with any program of public social services or otherwise designated as confidential under state law which he or she reasonably believes is relevant to the prevention, identification, or treatment of child abuse or the abuse of elder or dependent persons to other members of the team. All discussions relative to the disclosure or exchange of any such information or writing during team meetings are confidential and, notwithstanding any other provision of law, testimony concerning any such discussion is not admissible in any criminal, civil, or juvenile court proceeding.

As used in this section, “child abuse” has the same meaning as defined in Section 18951. As used in this section, “abuse of elder or dependent persons” has the meaning given in Section 15610.

As used in this section, “multidisciplinary personnel team” means any team of three or more persons, as specified in Section 15715 or 18951, the members of which are trained in the prevention, identification, and treatment of child abuse or the abuse of elder or dependent persons and are qualified to provide a broad range of services related to child abuse or the abuse of elder or dependent persons.

10850.3. (a) Notwithstanding Section 10850, an authorized employee of a county welfare department may disclose confidential information concerning a public social services applicant or recipient to any law enforcement agency where a warrant has been issued for the arrest of the applicant or recipient for the commission of a felony or a misdemeanor. Information that may be released pursuant to this section shall be limited to the name, address, telephone number, birthdate, social security number, and physical description, of the applicant for, or recipient of, public social services.

(b) A county welfare department may release the information specified by this section to any law enforcement agency only upon a written request from the agency specifying that a warrant of arrest for the commission of a felony or misdemeanor has been issued as to the applicant or recipient. This request may be made only by the head of the law enforcement agency, or by an employee of the agency so authorized and identified by name and title by the head of the agency in writing to the county welfare department. A county welfare department shall notify all applicants of public social services that release of confidential information from their records will not be protected if a felony or misdemeanor arrest warrant is issued against the applicant. A recipient of public social services shall be notified, at the time of renewal of his or her application for public social services, that a release of confidential information can be made if a felony or misdemeanor arrest warrant is issued against the recipient.

(c) This section shall not be construed to authorize the release of a general list identifying individuals applying for or receiving public social services.

(d) The provisions of this section shall be operative only to the extent permitted by federal law. The section shall not apply to, but shall exclude the Medi-Cal program, established pursuant to Chapter 7 (commencing with Section 14000) and following.

(e) This section shall remain in effect only until the director executes a declaration, that shall be retained by the director, stating that any federal approval required for implementation of Section 10850.3, as added during the 1995 portion of the 1995-96 Regular Session of the Legislature, has been obtained, and as of that date is repealed.

CALIFORNIA CODES
WELFARE AND INSTITUTIONS CODE
SECTION 827-830.1

827. (a) (1) Except as provided in Section 828, a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer, may be inspected only by the following:

- (A) Court personnel.
- (B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.
- (C) The minor who is the subject of the proceeding.
- (D) His or her parents or guardian.
- (E) The attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.
- (F) The superintendent or designee of the school district where the minor is enrolled or attending school.
- (G) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.
- (H) The State Department of Social Services to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12 of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements.
- (I) To authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services shall not contain the name of the minor.

(J) Members of children's multidisciplinary teams, persons or agencies providing treatment or supervision of the minor.

(K) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2) Any records or reports relating to a matter within the jurisdiction of the juvenile court prepared by or released by the court, a probation department, or the county department of social services, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, any of those records or reports, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be made attachments to any other documents without the prior approval of the presiding judge of the juvenile court, unless they are used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, and other forms of delinquency.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal may disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

An intentional violation of the confidentiality provisions of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor

came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

827.1. (a) Notwithstanding any other provision of law, a city, county, or city and county may establish a computerized data base system within that city, county, or city and county that permits the probation department, law enforcement agencies, and school districts to access probation department, law enforcement, school district, and juvenile court information and records which are nonprivileged and where release is authorized under state or federal law or regulation, regarding minors under the jurisdiction of the juvenile court pursuant to Section 602 or for whom a program of supervision has been undertaken where a petition could otherwise be filed pursuant to Section 602.

(b) Each city, county, or city and county permitting computer access to these agencies shall develop security procedures by which unauthorized personnel cannot access data contained in the system as well as procedures or devices to secure data from unauthorized access or disclosure. The right of access granted shall not include the right to add, delete, or alter data without the written permission of the agency holding the data.

827.1. Notwithstanding Section 827 or any other provision of law, written notice that a minor has been found by a court of competent jurisdiction to have committed any felony pursuant to Section 602 shall be provided by the court within seven days to the sheriff of the county in which the offense was committed and to the sheriff of the county in which the minor resides. Written notice shall include only that information regarding the felony offense found to have been committed by the minor and the disposition of the minor's case. If at any time thereafter the court modifies the disposition of the minor's case, it shall also notify the sheriff as provided

above. The sheriff may disseminate the information to other law enforcement personnel upon request, provided that he or she reasonably believes that the release of this information is generally relevant to the prevention or control of juvenile crime.

Any information received pursuant to this section shall be received in confidence for the limited law enforcement purpose for which it was provided and shall not be further disseminated except as provided in this section. An intentional violation of the confidentiality provisions of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

827.5. Notwithstanding any other provision of law except Sections 389 and 781 of this code and Section 1203.45 of the Penal Code, a law enforcement agency may disclose the name of any minor 14 years of age or older taken into custody for the commission of any serious felony, as defined in subdivision (c) of Section 1192.7 of the Penal Code, and the offenses allegedly committed, upon the request of interested persons, if a hearing has commenced that is based upon a petition that alleges that the minor is a person within the description of Section 602.

827.6. (a) Notwithstanding any other provision of law, the presiding judge of the juvenile court may authorize a law enforcement agency to disclose only the name and other information necessary to identify a minor who is lawfully sought for arrest as a suspect in the commission of any felony listed in subdivision (b) of Section 707 where the disclosure is imperative for the apprehension of the minor. The court order shall be solely for the limited purpose of enabling law enforcement to apprehend the minor, and shall contain the exact nature of the data to be released. In determining whether to authorize the release of information pursuant to this section, the court shall balance the confidentiality interests of the minor under this chapter, the due diligence of law enforcement to apprehend the minor prior to the filing of a petition for disclosure, and public safety interests raised by the facts of the minor's case.

(b) When seeking an order of disclosure pursuant to this section, in addition to any other information requested by the presiding judge, a law enforcement agency shall submit to the court a verified declaration and any supporting exhibits indicating the probable cause for the lawful arrest of the minor, efforts to locate the minor, including, but not limited, to persons contacted, surveillance activity, search efforts, and any other pertinent information, and all evidence regarding why the order is critical, including a minor's danger to himself or herself, the minor's danger to others, the minor's flight risk, and any other information indicating the urgency for a court order.

828. (a) Except as provided in Sections 389 and 781 of this code or Section 1203.45 of the Penal Code, any information gathered by a law enforcement agency relating to the taking of a minor into custody may be disclosed to another law enforcement agency, including a school district police or security department, or to any person or agency which has a legitimate need for the information for purposes of official disposition of a case. When the disposition of a taking into custody is available, it shall be included with any information disclosed.

A court shall consider any information relating to the taking of a minor into custody, if the information is not contained in a record which has been sealed, for purposes of determining whether adjudications of commission of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 of the Penal Code or to deny probation.

(b) When a law enforcement agency has been notified pursuant to Section 1155 that a minor has escaped from a secure detention facility, the law enforcement agency shall release the name

of, and any descriptive information about, the minor to a person who specifically requests this information. The law enforcement agency may release the information on the minor without a request to do so if it finds that release of the information would be necessary to assist in recapturing the minor or that it would be necessary to protect the public from substantial physical harm.

828.01. (a) Notwithstanding any other provision of law, a law enforcement agency may release the name of, and any descriptive information about, a minor, 14 years of age or older, and the offenses allegedly committed by that minor, if there is an outstanding warrant for the arrest of that minor for an offense described in paragraph (1) of subdivision (e) of Section 707. Any releases made pursuant to this section shall be reported to the presiding judge of the juvenile court.

(b) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

828.1. (a) While the Legislature reaffirms its belief that juvenile criminal records, in general, should be confidential, it is the intent of the Legislature in enacting this section to provide for a limited exception to that confidentiality in cases involving serious acts of violence. Further, it is the intent of the Legislature that even in these selected cases the dissemination of juvenile criminal records be as limited as possible, consistent with the need to work with a student in an appropriate fashion, and the need to protect potentially vulnerable school staff and other students over whom the school staff exercises direct supervision and responsibility.

(b) Notwithstanding subdivision (a) of Section 828, a school district police or security department may provide written notice to the superintendent of the school district that a minor enrolled in a public school maintained by that school district, in kindergarten or any of grades 1 to 12, inclusive, has been found by a court of competent jurisdiction to have illegally used, sold, or possessed a controlled substance as defined in Section 11007 of the Health and Safety Code or to have committed any crime listed in paragraphs (1) to (15), inclusive, or paragraphs (17) to (19), inclusive, or paragraphs (25) to (29), inclusive, of subdivision (b) of, or in paragraph (2) of subdivision (d) of, or subdivision (e) of, Section 707. The information may be expeditiously transmitted to any teacher, counselor, or administrator with direct supervisory or disciplinary responsibility over the minor, who the superintendent or his or her designee, after consultation with the principal at the school of attendance, believes needs this information to work with the student in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

(c) Any information received by a teacher, counselor, or administrator pursuant to this section shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher, counselor, or administrator. An intentional violation of the confidentiality provisions of this section is a misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500).

828.3. Notwithstanding any other provision of law, information relating to the taking of a minor into custody on the basis that he or she has committed a crime against the property, students, or personnel of a school district or a finding by the juvenile court that the minor has committed such a crime may be exchanged between law enforcement personnel, the school

district superintendent, and the principal of a public school in which the minor is enrolled as a student if the offense was against the property, students, or personnel of that school.

829. Notwithstanding any other provision of law, the Board of Prison Terms, in order to evaluate the suitability for release of a person before the board, shall be entitled to review juvenile court records which have not been sealed, concerning the person before the board, if those records relate to a case in which the person was found to have committed an offense which brought the person within the jurisdiction of the juvenile court pursuant to Section 602.

830. Notwithstanding any other provision of law, members of a multidisciplinary personnel team engaged in the prevention, identification, and treatment of child abuse may disclose and exchange information and writings to and with one another relating to any incidents of child abuse that may also be a part of a juvenile court record or otherwise designated as confidential under state law if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification, or treatment of child abuse. All discussions relative to the disclosure or exchange of any such information or writings during team meetings are confidential and, notwithstanding any other provision of law, testimony concerning any such discussion is not admissible in any criminal, civil, or juvenile court proceeding.

As used in this section, “child abuse” has the same meaning as defined in Section 18951.

As used in this section, “multidisciplinary personnel team” means any team of three or more persons, as specified in Section 18951, the members of which are trained in the prevention, identification, and treatment of child abuse and are qualified to provide a broad range of services related to child abuse.

830.1. Notwithstanding any other provision of law, members of a juvenile justice multidisciplinary team engaged in the prevention, identification, and control of crime, including, but not limited to, criminal street gang activity, may disclose and exchange nonprivileged information and writings to and with one another relating to any incidents of juvenile crime, including criminal street gang activity, that may also be part of a juvenile court record or otherwise designated as confidential under state law if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification, or control of juvenile crime or criminal street gang activity. Every member of a juvenile justice multidisciplinary team who receives such information or writings shall be under the same privacy and confidentiality obligations and subject to the same penalties for violating those obligations as the person disclosing or providing the information or writings. The information obtained shall be maintained in a manner which ensures the protection of confidentiality.

As used in this section, “nonprivileged information” means any information not subject to a privilege pursuant to Division 8 (commencing with Section 900) of the Evidence Code.

As used in this section, “criminal street gang” has the same meaning as defined in Section 186.22 of the Penal Code.

As used in this section, “multidisciplinary team” means any team of three or more persons, the members of which are trained in the prevention, identification, and control of juvenile crime, including, but not limited to, criminal street gang activity, and are qualified to provide a broad range of services related to the problems posed by juvenile crime and criminal street gangs. The

team may include, but is not limited to:

- (a) Police officers or other law enforcement agents.
- (b) Prosecutors.
- (c) Probation officers.
- (d) School district personnel with experience or training in juvenile crime or criminal street gang control.
- (e) Counseling personnel with experience or training in juvenile crime or criminal street gang control.
- (f) State, county, city, or special district recreation specialists with experience or training in juvenile crime or criminal street gang control.

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TITLE 42—PUBLIC HEALTH

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

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Source: 52 FR 21809, June 9, 1987, unless otherwise noted.

Subpart A—Introduction

Sec. 2.1 Statutory authority for confidentiality of drug abuse patient records.

The restrictions of these regulations upon the disclosure and use of drug abuse patient records were initially authorized by section 408 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act (21 U.S.C. 1175). That section as amended was transferred by Pub. L. 98-24 to section 527 of the Public Health Service Act which is codified at 42 U.S.C. 290ee-3. The amended statutory authority is set forth below:

Sec. 290ee-3. Confidentiality of patient records.

(a) Disclosure authorization

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b) Purposes and circumstances of disclosure affecting consenting patient and patient regardless of consent

(1) The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is

maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g) of this section.

(2) Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives his written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Prohibition against use of record in making criminal charges or investigation of patient
Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) Continuing prohibition against disclosure irrespective of status as patient

The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

(e) Armed Forces and Veterans' Administration; interchange of records; report of suspected child abuse and neglect to State or local authorities

The prohibitions of this section do not apply to any interchange of records—

(1) within the Armed Forces or within those components of the Veterans' Administration furnishing health care to veterans, or

(2) between such components and the Armed Forces.

The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.

(f) Penalty for first and subsequent offenses

Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined not more than \$500 in the case of a first offense, and not more than \$5,000 in the case of each subsequent offense.

(g) Regulations; interagency consultations; definitions, safeguards, and procedures, including procedures and criteria for issuance and scope of orders

Except as provided in subsection (h) of this section, the Secretary, after consultation with the Administrator of Veterans' Affairs and the heads of other Federal departments and agencies substantially affected thereby, shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C) of this section, as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(Subsection (h) was superseded by section 111(c)(3) of Pub. L. 94-581. The responsibility of the Administrator of Veterans' Affairs to write regulations to provide for confidentiality of drug abuse patient records under Title 38 was moved from 21 U.S.C. 1175 to 38 U.S.C. 4134.)

Sec. 2.2 Statutory authority for confidentiality of alcohol abuse patient records.

The restrictions of these regulations upon the disclosure and use of alcohol abuse patient records were initially authorized by section 333 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (42 U.S.C. 4582). The section as amended was transferred by Pub. L. 98-24 to section 523 of the Public Health Service Act which is codified at 42 U.S.C. 290dd-3. The amended statutory authority is set forth below:

Sec. 290dd-3. Confidentiality of patient records

(a) Disclosure authorization

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b) Purposes and circumstances of disclosure affecting consenting patient and patient regardless of consent

(1) The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g) of this section.

(2) Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives his written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Prohibition against use of record in making criminal charges or investigation of patient

Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) Continuing prohibition against disclosure irrespective of status as patient

The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

(e) Armed Forces and Veterans' Administration; interchange of record of suspected child abuse and neglect to State or local authorities

The prohibitions of this section do not apply to any interchange of records—

(1) within the Armed Forces or within those components of the Veterans' Administration furnishing health care to veterans, or

(2) between such components and the Armed Forces.

The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.

(f) Penalty for first and subsequent offenses

Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined not more than \$500 in the case of a first offense, and not more than \$5,000 in the case of each subsequent offense.

(g) Regulations of Secretary; definitions, safeguards, and procedures, including procedures and criteria for issuance and scope of orders

Except as provided in subsection (h) of this section, the Secretary shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C) of this section, as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(Subsection (h) was superseded by section 111(c)(4) of Pub. L. 94-581. The responsibility of the Administrator of Veterans' Affairs to write regulations to provide for confidentiality of alcohol abuse patient records under Title 38 was moved from 42 U.S.C. 4582 to 38 U.S.C. 4134.)

Sec. 2.3 Purpose and effect.

(a) Purpose. Under the statutory provisions quoted in Secs. 2.1 and 2.2, these regulations impose restrictions upon the disclosure and use of alcohol and drug abuse patient records which are maintained in connection with the performance of any federally assisted alcohol and drug abuse program. The regulations specify:

(1) Definitions, applicability, and general restrictions in subpart B (definitions applicable to Sec. 2.34 only appear in that section);

(2) Disclosures which may be made with written patient consent and the form of the written consent in subpart C;

(3) Disclosures which may be made without written patient consent or an authorizing court order in subpart D; and

(4) Disclosures and uses of patient records which may be made with an authorizing court order and the procedures and criteria for the entry and scope of those orders in subpart E.

(b) Effect. (1) These regulations prohibit the disclosure and use of patient records unless certain circumstances exist. If any circumstances exists under which disclosure is permitted, that

circumstance acts to remove the prohibition on disclosure but it does not compel disclosure. Thus, the regulations do not require disclosure under any circumstances.

(2) These regulations are not intended to direct the manner in which substantive functions such as research, treatment, and evaluation are carried out. They are intended to insure that an alcohol or drug abuse patient in a federally assisted alcohol or drug abuse program is not made more vulnerable by reason of the availability of his or her patient record than an individual who has an alcohol or drug problem and who does not seek treatment.

(3) Because there is a criminal penalty (a fine—see 42 U.S.C. 290ee-3(f), 42 U.S.C. 290dd-3(f) and 42 CFR 2.4) for violating the regulations, they are to be construed strictly in favor of the potential violator in the same manner as a criminal statute (see *M. Kraus & Brothers v. United States*, 327 U.S. 614, 621-22, 66 S. Ct. 705, 707-08 (1946)).

Sec. 2.4 Criminal penalty for violation.

Under 42 U.S.C. 290ee-3(f) and 42 U.S.C. 290dd-3(f), any person who violates any provision of those statutes or these regulations shall be fined not more than \$500 in the case of a first offense, and not more than \$5,000 in the case of each subsequent offense.

Sec. 2.5 Reports of violations.

(a) The report of any violation of these regulations may be directed to the United States Attorney for the judicial district in which the violation occurs.

(b) The report of any violation of these regulations by a methadone program may be directed to the Regional Offices of the Food and Drug Administration.

Subpart B—General Provisions

Sec. 2.11 Definitions.

For purposes of these regulations:

Alcohol abuse means the use of an alcoholic beverage which impairs the physical, mental, emotional, or social well-being of the user.

Drug abuse means the use of a psychoactive substance for other than medicinal purposes which impairs the physical, mental, emotional, or social well-being of the user.

Diagnosis means any reference to an individual's alcohol or drug abuse or to a condition which is identified as having been caused by that abuse which is made for the purpose of treatment or referral for treatment.

Disclose or disclosure means a communication of patient indentifying information, the affirmative verification of another person's communication of patient identifying information, or the communication of any information from the record of a patient who has been identified.

Informant means an individual:

(a) Who is a patient or employee of a program or who becomes a patient or employee of a program at the request of a law enforcement agency or official: and

(b) Who at the request of a law enforcement agency or official observes one or more patients or employees of the program for the purpose of reporting the information obtained to the law enforcement agency or official.

Patient means any individual who has applied for or been given diagnosis or treatment for alcohol or drug abuse at a federally assisted program and includes any individual who, after arrest on a criminal charge, is identified as an alcohol or drug abuser in order to determine that individual's eligibility to participate in a program.

Patient identifying information means the name, address, social security number, fingerprints, photograph, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a number assigned to a patient by a program, if that number does not consist of, or contain numbers (such as a social security, or driver's license number) which could be used to identify a patient with reasonable accuracy and speed from sources external to the program.

Person means an individual, partnership, corporation, Federal, State or local government agency, or any other legal entity.

Program means:

- (a) An individual or entity (other than a general medical care facility) who holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment; or
- (b) An identified unit within a general medical facility which holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment; or
- (c) Medical personnel or other staff in a general medical care facility whose primary function is the provision of alcohol or drug abuse diagnosis, treatment or referral for treatment and who are identified as such providers. (See Sec. 2.12(e)(1) for examples.)

Program director means:

- (a) In the case of a program which is an individual, that individual;
- (b) In the case of a program which is an organization, the individual designated as director, managing director, or otherwise vested with authority to act as chief executive of the organization.

Qualified service organization means a person which:

- (a) Provides services to a program, such as data processing, bill collecting, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, or services to prevent or treat child abuse or neglect, including training on nutrition and child care and individual and group therapy, and
- (b) Has entered into a written agreement with a program under which that person:
 - (1) Acknowledges that in receiving, storing, processing or otherwise dealing with any patient records from the programs, it is fully bound by these regulations; and
 - (2) If necessary, will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by these regulations.

Records means any information, whether recorded or not, relating to a patient received or acquired by a federally assisted alcohol or drug program.

Third party payer means a person who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of his family or on the basis of the patient's eligibility for Federal, State, or local governmental benefits.

Treatment means the management and care of a patient suffering from alcohol or drug abuse, a condition which is identified as having been caused by that abuse, or both, in order to reduce or eliminate the adverse effects upon the patient.

Undercover agent means an officer of any Federal, State, or local law enforcement agency who enrolls in or becomes an employee of a program for the purpose of investigating a suspected violation of law or who pursues that purpose after enrolling or becoming employed for other purposes.

[52 FR 21809, June 9, 1987, as amended by 60 FR 22297, May 5, 1995]

Sec. 2.12 Applicability.

(a) General—(1) Restrictions on disclosure. The restrictions on disclosure in these regulations apply to any information, whether or not recorded, which:

(i) Would identify a patient as an alcohol or drug abuser either directly, by reference to other publicly available information, or through verification of such an identification by another person; and

(ii) Is drug abuse information obtained by a federally assisted drug abuse program after March 20, 1972, or is alcohol abuse information obtained by a federally assisted alcohol abuse program after May 13, 1974 (or if obtained before the pertinent date, is maintained by a federally assisted alcohol or drug abuse program after that date as part of an ongoing treatment episode which extends past that date) for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for that treatment.

(2) Restriction on use. The restriction on use of information to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient (42 U.S.C. 290ee-3(c), 42 U.S.C. 290dd-3(c)) applies to any information, whether or not recorded which is drug abuse information obtained by a federally assisted drug abuse program after March 20, 1972, or is alcohol abuse information obtained by a federally assisted alcohol abuse program after May 13, 1974 (or if obtained before the pertinent date, is maintained by a federally assisted alcohol or drug abuse program after that date as part of an ongoing treatment episode which extends past that date), for the purpose of treating alcohol or drug abuse, making a diagnosis for the treatment, or making a referral for the treatment.

(b) Federal assistance. An alcohol abuse or drug abuse program is considered to be federally assisted if:

(1) It is conducted in whole or in part, whether directly or by contract or otherwise by any department or agency of the United States (but see paragraphs (c)(1) and (c)(2) of this section relating to the Veterans' Administration and the Armed Forces);

(2) It is being carried out under a license, certification, registration, or other authorization granted by any department or agency of the United States including but not limited to:

(i) Certification of provider status under the Medicare program;

(ii) Authorization to conduct methadone maintenance treatment (see 21 CFR 291.505); or

(iii) Registration to dispense a substance under the Controlled Substances Act to the extent the controlled substance is used in the treatment of alcohol or drug abuse;

(3) It is supported by funds provided by any department or agency of the United States by being:

(i) A recipient of Federal financial assistance in any form, including financial assistance which does not directly pay for the alcohol or drug abuse diagnosis, treatment, or referral activities; or

(ii) Conducted by a State or local government unit which, through general or special revenue sharing or other forms of assistance, receives Federal funds which could be (but are not necessarily) spent for the alcohol or drug abuse program; or

(4) It is assisted by the Internal Revenue Service of the Department of the Treasury through the allowance of income tax deductions for contributions to the program or through the granting of tax exempt status to the program.

(c) Exceptions—(1) Veterans' Administration. These regulations do not apply to information on alcohol and drug abuse patients maintained in connection with the Veterans' Administration provisions of hospital care, nursing home care, domiciliary care, and medical services under title 38, United States Code. Those records are governed by 38 U.S.C. 4132 and regulations issued under that authority by the Administrator of Veterans' Affairs.

(2) Armed Forces. These regulations apply to any information described in paragraph (a) of this section which was obtained by any component of the Armed Forces during a period when the patient was subject to the Uniform Code of Military Justice except:

(i) Any interchange of that information within the Armed Forces; and

(ii) Any interchange of that information between the Armed Forces and those components of the Veterans Administration furnishing health care to veterans.

(3) Communication within a program or between a program and an entity having direct administrative control over that program. The restrictions on disclosure in these regulations do not apply to communications of information between or among personnel having a need for the information in connection with their duties that arise out of the provision of diagnosis, treatment, or referral for treatment of alcohol or drug abuse if the communications are

(i) Within a program or

(ii) Between a program and an entity that has direct administrative control over the program.

(4) Qualified Service Organizations. The restrictions on disclosure in these regulations do not apply to communications between a program and a qualified service organization of information needed by the organization to provide services to the program.

(5) Crimes on program premises or against program personnel. The restrictions on disclosure and use in these regulations do not apply to communications from program personnel to law enforcement officers which—

(i) Are directly related to a patient's commission of a crime on the premises of the program or against program personnel or to a threat to commit such a crime; and

(ii) Are limited to the circumstances of the incident, including the patient status of the individual committing or threatening to commit the crime, that individual's name and address, and that individual's last known whereabouts.

(6) Reports of suspected child abuse and neglect. The restrictions on disclosure and use in these regulations do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities. However, the restrictions continue to apply to the original alcohol or drug abuse patient records maintained by the program including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect.

(d) Applicability to recipients of information—(1) Restriction on use of information. The restriction on the use of any information subject to these regulations to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient applies to any person who obtains that information from a federally assisted alcohol or drug abuse program, regardless of the status of the person obtaining the information or of whether the information was

obtained in accordance with these regulations. This restriction on use bars, among other things, the introduction of that information as evidence in a criminal proceeding and any other use of the information to investigate or prosecute a patient with respect to a suspected crime. Information obtained by undercover agents or informants (see Sec. 2.17) or through patient access (see Sec. 2.23) is subject to the restriction on use.

(2) Restrictions on disclosures—Third party payers, administrative entities, and others. The restrictions on disclosure in these regulations apply to:

(i) Third party payers with regard to records disclosed to them by federally assisted alcohol or drug abuse programs;

(ii) Entities having direct administrative control over programs with regard to information communicated to them by the program under Sec. 2.12(c)(3); and

(iii) Persons who receive patient records directly from a federally assisted alcohol or drug abuse program and who are notified of the restrictions on redisclosure of the records in accordance with Sec. 2.32 of these regulations.

(e) Explanation of applicability—(1) Coverage. These regulations cover any information (including information on referral and intake) about alcohol and drug abuse patients obtained by a program (as the terms “patient” and “program” are defined in Sec. 2.11) if the program is federally assisted in any manner described in Sec. 2.12(b). Coverage includes, but is not limited to, those treatment or rehabilitation programs, employee assistance programs, programs within general hospitals, school-based programs, and private practitioners who hold themselves out as providing, and provide alcohol or drug abuse diagnosis, treatment, or referral for treatment. However, these regulations would not apply, for example, to emergency room personnel who refer a patient to the intensive care unit for an apparent overdose, unless the primary function of such personnel is the provision of alcohol or drug abuse diagnosis, treatment or referral and they are identified as providing such services or the emergency room has promoted itself to the community as a provider of such services.

(2) Federal assistance to program required. If a patient’s alcohol or drug abuse diagnosis, treatment, or referral for treatment is not provided by a program which is federally conducted, regulated or supported in a manner which constitutes Federal assistance under Sec. 2.12(b), that patient’s record is not covered by these regulations. Thus, it is possible for an individual patient to benefit from Federal support and not be covered by the confidentiality regulations because the program in which the patient is enrolled is not federally assisted as defined in Sec. 2.12(b). For example, if a Federal court placed an individual in a private for-profit program and made a payment to the program on behalf of that individual, that patient’s record would not be covered by these regulations unless the program itself received Federal assistance as defined by Sec. 2.12(b).

(3) Information to which restrictions are applicable. Whether a restriction is on use or disclosure affects the type of information which may be available. The restrictions on disclosure apply to any information which would identify a patient as an alcohol or drug abuser. The restriction on use of information to bring criminal charges against a patient for a crime applies to any information obtained by the program for the purpose of diagnosis, treatment, or referral for treatment of alcohol or drug abuse. (Note that restrictions on use and disclosure apply to recipients of information under Sec. 2.12(d).)

(4) How type of diagnosis affects coverage. These regulations cover any record of a diagnosis identifying a patient as an alcohol or drug abuser which is prepared in connection with the treatment or referral for treatment of alcohol or drug abuse. A diagnosis prepared for the purpose

of treatment or referral for treatment but which is not so used is covered by these regulations. The following are not covered by these regulations:

- (i) Diagnosis which is made solely for the purpose of providing evidence for use by law enforcement authorities; or
- (ii) A diagnosis of drug overdose or alcohol intoxication which clearly shows that the individual involved is not an alcohol or drug abuser (e.g., involuntary ingestion of alcohol or drugs or reaction to a prescribed dosage of one or more drugs).

[52 FR 21809, June 9, 1987; 52 FR 42061, Nov. 2, 1987, as amended at 60 FR 22297, May 5, 1995]

Sec. 2.13 Confidentiality restrictions.

(a) General. The patient records to which these regulations apply may be disclosed or used only as permitted by these regulations and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, State, or local authority. Any disclosure made under these regulations must be limited to that information which is necessary to carry out the purpose of the disclosure.

(b) Unconditional compliance required. The restrictions on disclosure and use in these regulations apply whether the holder of the information believes that the person seeking the information already has it, has other means of obtaining it, is a law enforcement or other official, has obtained a subpoena, or asserts any other justification for a disclosure or use which is not permitted by these regulations.

(c) Acknowledging the presence of patients: Responding to requests. (1) The presence of an identified patient in a facility or component of a facility which is publicly identified as a place where only alcohol or drug abuse diagnosis, treatment, or referral is provided may be acknowledged only if the patient's written consent is obtained in accordance with subpart C of these regulations or if an authorizing court order is entered in accordance with subpart E of these regulations. The regulations permit acknowledgement of the presence of an identified patient in a facility or part of a facility if the facility is not publicly identified as only an alcohol or drug abuse diagnosis, treatment or referral facility, and if the acknowledgement does not reveal that the patient is an alcohol or drug abuser.

(2) Any answer to a request for a disclosure of patient records which is not permissible under these regulations must be made in a way that will not affirmatively reveal that an identified individual has been, or is being diagnosed or treated for alcohol or drug abuse. An inquiring party may be given a copy of these regulations and advised that they restrict the disclosure of alcohol or drug abuse patient records, but may not be told affirmatively that the regulations restrict the disclosure of the records of an identified patient. The regulations do not restrict a disclosure that an identified individual is not and never has been a patient.

Sec. 2.14 Minor patients.

(a) Definition of minor. As used in these regulations the term "minor" means a person who has not attained the age of majority specified in the applicable State law, or if no age of majority is specified in the applicable State law, the age of eighteen years.

(b) State law not requiring parental consent to treatment. If a minor patient acting alone has the legal capacity under the applicable State law to apply for and obtain alcohol or drug abuse treatment, any written consent for disclosure authorized under subpart C of these regulations may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. These regulations do not prohibit a program from refusing to provide treatment until the minor patient consents to the disclosure necessary to obtain reimbursement, but refusal to provide treatment may be prohibited under a State or local law requiring the program to furnish the service irrespective of ability to pay.

(c) State law requiring parental consent to treatment. (1) Where State law requires consent of a parent, guardian, or other person for a minor to obtain alcohol or drug abuse treatment, any written consent for disclosure authorized under subpart C of these regulations must be given by both the minor and his or her parent, guardian, or other person authorized under State law to act in the minor's behalf.

(2) Where State law requires parental consent to treatment the fact of a minor's application for treatment may be communicated to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf only if:

(i) The minor has given written consent to the disclosure in accordance with subpart C of these regulations or

(ii) The minor lacks the capacity to make a rational choice regarding such consent as judged by the program director under paragraph (d) of this section.

(d) Minor applicant for services lacks capacity for rational choice. Facts relevant to reducing a threat to the life or physical well being of the applicant or any other individual may be disclosed to the parent, guardian, or other person authorized under State law to act in the minor's behalf if the program director judges that:

(1) A minor applicant for services lacks capacity because of extreme youth or mental or physical condition to make a rational decision on whether to consent to a disclosure under subpart C of these regulations to his or her parent, guardian, or other person authorized under State law to act in the minor's behalf, and

(2) The applicant's situation poses a substantial threat to the life or physical well being of the applicant or any other individual which may be reduced by communicating relevant facts to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf.

Sec. 2.15 Incompetent and deceased patients.

(a) Incompetent patients other than minors—(1) Adjudication of incompetence. In the case of a patient who has been adjudicated as lacking the capacity, for any reason other than insufficient age, to manage his or her own affairs, any consent which is required under these regulations may be given by the guardian or other person authorized under State law to act in the patient's behalf.

(2) No adjudication of incompetency. For any period for which the program director determines that a patient, other than a minor or one who has been adjudicated incompetent, suffers from a medical condition that prevents knowing or effective action on his or her own behalf, the program director may exercise the right of the patient to consent to a disclosure under subpart C of these regulations for the sole purpose of obtaining payment for services from a third party payer.

(b) Deceased patients—(1) Vital statistics. These regulations do not restrict the disclosure of patient identifying information relating to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death.

(2) Consent by personal representative. Any other disclosure of information identifying a deceased patient as an alcohol or drug abuser is subject to these regulations. If a written consent to the disclosure is required, that consent may be given by an executor, administrator, or other personal representative appointed under applicable State law. If there is no such appointment the consent may be given by the patient's spouse or, if none, by any responsible member of the patient's family.

Sec. 2.16 Security for written records.

(a) Written records which are subject to these regulations must be maintained in a secure room, locked file cabinet, safe or other similar container when not in use; and

(b) Each program shall adopt in writing procedures which regulate and control access to and use of written records which are subject to these regulations.

Sec. 2.17 Undercover agents and informants.

(a) Restrictions on placement. Except as specifically authorized by a court order granted under Sec. 2.67 of these regulations, no program may knowingly employ, or enroll as a patient, any undercover agent or informant.

(b) Restriction on use of information. No information obtained by an undercover agent or informant, whether or not that undercover agent or informant is placed in a program pursuant to an authorizing court order, may be used to criminally investigate or prosecute any patient.

[52 FR 21809, June 9, 1987; 52 FR 42061, Nov. 2, 1987]

Sec. 2.18 Restrictions on the use of identification cards.

No person may require any patient to carry on his or her person while away from the program premises any card or other object which would identify the patient as an alcohol or drug abuser. This section does not prohibit a person from requiring patients to use or carry cards or other identification objects on the premises of a program.

Sec. 2.19 Disposition of records by discontinued programs.

(a) General. If a program discontinues operations or is taken over or acquired by another program, it must purge patient identifying information from its records or destroy the records unless—

(1) The patient who is the subject of the records gives written consent (meeting the requirements of Sec. 2.31) to a transfer of the records to the acquiring program or to any other program designated in the consent (the manner of obtaining this consent must minimize the likelihood of a disclosure of patient identifying information to a third party); or

(2) There is a legal requirement that the records be kept for a period specified by law which does not expire until after the discontinuation or acquisition of the program.

(b) Procedure where retention period required by law. If paragraph (a)(2) of this section applies, the records must be:

(1) Sealed in envelopes or other containers labeled as follows: “Records of [insert name of program] required to be maintained under [insert citation to statute, regulation, court order or other legal authority requiring that records be kept] until a date not later than [insert appropriate date]”; and

(2) Held under the restrictions of these regulations by a responsible person who must, as soon as practicable after the end of the retention period specified on the label, destroy the records.

Sec. 2.20 Relationship to State laws.

The statutes authorizing these regulations (42 U.S.C. 290ee-3 and 42 U.S.C. 290dd-3) do not preempt the field of law which they cover to the exclusion of all State laws in that field. If a disclosure permitted under these regulations is prohibited under State law, neither these regulations nor the authorizing statutes may be construed to authorize any violation of that State law. However, no State law may either authorize or compel any disclosure prohibited by these regulations.

Sec. 2.21 Relationship to Federal statutes protecting research subjects against compulsory disclosure of their identity.

(a) Research privilege description. There may be concurrent coverage of patient identifying information by these regulations and by administrative action taken under: Section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a) and the implementing regulations at 42 CFR part 2a); or section 502(c) of the Controlled Substances Act (21 U.S.C. 872(c) and the implementing regulations at 21 CFR 1316.21). These “research privilege” statutes confer on the Secretary of Health and Human Services and on the Attorney General, respectively, the power to authorize researchers conducting certain types of research to withhold from all persons not connected with the research the names and other identifying information concerning individuals who are the subjects of the research.

(b) Effect of concurrent coverage. These regulations restrict the disclosure and use of information about patients, while administrative action taken under the research privilege statutes and implementing regulations protects a person engaged in applicable research from being compelled to disclose any identifying characteristics of the individuals who are the subjects of that research. The issuance under subpart E of these regulations of a court order authorizing a disclosure of information about a patient does not affect an exercise of authority under these research privilege statutes. However, the research privilege granted under 21 CFR 291.505(g) to treatment programs using methadone for maintenance treatment does not protect from compulsory disclosure any information which is permitted to be disclosed under those regulations. Thus, if a court order entered in accordance with subpart E of these regulations authorizes a methadone maintenance treatment program to disclose certain information about its patients, that program may not invoke the research privilege under 21 CFR 291.505(g) as a defense to a subpoena for that information.

Sec. 2.22 Notice to patients of Federal confidentiality requirements.

(a) Notice required. At the time of admission or as soon thereafter as the patient is capable of rational communication, each program shall:

(1) Communicate to the patient that Federal law and regulations protect the confidentiality of alcohol and drug abuse patient records; and

(2) Give to the patient a summary in writing of the Federal law and regulations.

(b) Required elements of written summary. The written summary of the Federal law and regulations must include:

(1) A general description of the limited circumstances under which a program may acknowledge that an individual is present at a facility or disclose outside the program information identifying a patient as an alcohol or drug abuser.

(2) A statement that violation of the Federal law and regulations by a program is a crime and that suspected violations may be reported to appropriate authorities in accordance with these regulations.

(3) A statement that information related to a patient's commission of a crime on the premises of the program or against personnel of the program is not protected.

(4) A statement that reports of suspected child abuse and neglect made under State law to appropriate State or local authorities are not protected.

(5) A citation to the Federal law and regulations.

(c) Program options. The program may devise its own notice or may use the sample notice in paragraph (d) to comply with the requirement to provide the patient with a summary in writing of the Federal law and regulations. In addition, the program may include in the written summary information concerning State law and any program policy not inconsistent with State and Federal law on the subject of confidentiality of alcohol and drug abuse patient records.

(d) Sample notice.

Confidentiality of Alcohol and Drug Abuse Patient Records

The confidentiality of alcohol and drug abuse patient records maintained by this program is protected by Federal law and regulations. Generally, the program may not say to a person outside the program that a patient attends the program, or disclose any information identifying a patient as an alcohol or drug abuser Unless:

(1) The patient consents in writing;

(2) The disclosure is allowed by a court order; or

(3) The disclosure is made to medical personnel in a medical emergency or to qualified personnel for research, audit, or program evaluation.

Violation of the Federal law and regulations by a program is a crime. Suspected violations may be reported to appropriate authorities in accordance with Federal regulations.

Federal law and regulations do not protect any information about a crime committed by a patient either at the program or against any person who works for the program or about any threat to commit such a crime.

Federal laws and regulations do not protect any information about suspected child abuse or neglect from being reported under State law to appropriate State or local authorities.

(See 42 U.S.C. 290dd-3 and 42 U.S.C. 290ee-3 for Federal laws and 42 CFR part 2 for Federal regulations.)

(Approved by the Office of Management and Budget under control number 0930-0099)

Sec. 2.23 Patient access and restrictions on use.

(a) Patient access not prohibited. These regulations do not prohibit a program from giving a patient access to his or her own records, including the opportunity to inspect and copy any records that the program maintains about the patient. The program is not required to obtain a patient's written consent or other authorization under these regulations in order to provide such access to the patient.

(b) Restriction on use of information. Information obtained by patient access to his or her patient record is subject to the restriction on use of his information to initiate or substantiate any criminal charges against the patient or to conduct any criminal investigation of the patient as provided for under Sec. 2.12(d)(1).

Subpart C—Disclosures With Patient's Consent

Sec. 2.31 Form of written consent.

(a) Required elements. A written consent to a disclosure under these regulations must include:

- (1) The specific name or general designation of the program or person permitted to make the disclosure.
- (2) The name or title of the individual or the name of the organization to which disclosure is to be made.
- (3) The name of the patient.
- (4) The purpose of the disclosure.
- (5) How much and what kind of information is to be disclosed.
- (6) The signature of the patient and, when required for a patient who is a minor, the signature of a person authorized to give consent under Sec. 2.14; or, when required for a patient who is incompetent or deceased, the signature of a person authorized to sign under Sec. 2.15 in lieu of the patient.
- (7) The date on which the consent is signed.
- (8) A statement that the consent is subject to revocation at any time except to the extent that the program or person which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer.
- (9) The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must insure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

(b) Sample consent form. The following form complies with paragraph (a) of this section, but other elements may be added.

1. I (name of patient) {time} Request {time} Authorize:
2. (name or general designation of program which is to make the disclosure)

3. To disclose: (kind and amount of information to be disclosed)

4. To: (name or title of the person or organization to which disclosure is to be made)

5. For (purpose of the disclosure)

6. Date (on which this consent is signed)

7. Signature of patient

8. Signature of parent or guardian (where required)

9. Signature of person authorized to sign in lieu of the patient (where required)

10. This consent is subject to revocation at any time except to the extent that the program which is to make the disclosure has already taken action in reliance on it. If not previously revoked, this consent will terminate upon: (specific date, event, or condition)

(c) Expired, deficient, or false consent. A disclosure may not be made on the basis of a consent which:

- (1) Has expired;
- (2) On its face substantially fails to conform to any of the requirements set forth in paragraph (a) of this section;
- (3) Is known to have been revoked; or
- (4) Is known, or through a reasonable effort could be known, by the person holding the records to be materially false.

(Approved by the Office of Management and Budget under control number 0930-0099)

Sec. 2.32 Prohibition on redisclosure.

Notice to accompany disclosure. Each disclosure made with the patient's written consent must be accompanied by the following written statement:

This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

[52 FR 21809, June 9, 1987; 52 FR 41997, Nov. 2, 1987]

Sec. 2.33 Disclosures permitted with written consent.

If a patient consents to a disclosure of his or her records under Sec. 2.31, a program may disclose those records in accordance with that consent to any individual or organization named in the consent, except that disclosures to central registries and in connection with criminal justice referrals must meet the requirements of Secs. 2.34 and 2.35, respectively.

Sec. 2.34 Disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs.

(a) Definitions. For purposes of this section:

Central registry means an organization which obtains from two or more member programs patient identifying information about individuals applying for maintenance treatment or detoxification treatment for the purpose of avoiding an individual's concurrent enrollment in more than one program.

Detoxification treatment means the dispensing of a narcotic drug in decreasing doses to an individual in order to reduce or eliminate adverse physiological or psychological effects incident to withdrawal from the sustained use of a narcotic drug.

Maintenance treatment means the dispensing of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.

Member program means a detoxification treatment or maintenance treatment program which reports patient identifying information to a central registry and which is in the same State as that central registry or is not more than 125 miles from any border of the State in which the central registry is located.

(b) Restrictions on disclosure. A program may disclose patient records to a central registry or to any detoxification or maintenance treatment program not more than 200 miles away for the purpose of preventing the multiple enrollment of a patient only if:

(1) The disclosure is made when:

- (i) The patient is accepted for treatment;
- (ii) The type or dosage of the drug is changed; or
- (iii) The treatment is interrupted, resumed or terminated.

(2) The disclosure is limited to:

- (i) Patient identifying information;
- (ii) Type and dosage of the drug; and
- (iii) Relevant dates.

(3) The disclosure is made with the patient's written consent meeting the requirements of Sec. 2.31, except that:

(i) The consent must list the name and address of each central registry and each known detoxification or maintenance treatment program to which a disclosure will be made; and

(ii) The consent may authorize a disclosure to any detoxification or maintenance treatment program established within 200 miles of the program after the consent is given without naming any such program.

(c) Use of information limited to prevention of multiple enrollments. A central registry and any detoxification or maintenance treatment program to which information is disclosed to prevent multiple enrollments may not redisclose or use patient identifying information for any purpose other than the prevention of multiple enrollments unless authorized by a court order under subpart E of these regulations.

(d) Permitted disclosure by a central registry to prevent a multiple enrollment. When a member program asks a central registry if an identified patient is enrolled in another member program and the registry determines that the patient is so enrolled, the registry may disclose—

(1) The name, address, and telephone number of the member program(s) in which the patient is already enrolled to the inquiring member program; and

(2) The name, address, and telephone number of the inquiring member program to the member program(s) in which the patient is already enrolled. The member programs may communicate as necessary to verify that no error has been made and to prevent or eliminate any multiple enrollment.

(e) Permitted disclosure by a detoxification or maintenance treatment program to prevent a multiple enrollment. A detoxification or maintenance treatment program which has received a disclosure under this section and has determined that the patient is already enrolled may communicate as necessary with the program making the disclosure to verify that no error has been made and to prevent or eliminate any multiple enrollment.

Sec. 2.35 Disclosures to elements of the criminal justice system which have referred patients.

(a) A program may disclose information about a patient to those persons within the criminal justice system which have made participation in the program a condition of the disposition of any criminal proceedings against the patient or of the patient's parole or other release from custody if:

(1) The disclosure is made only to those individuals within the criminal justice system who have a need for the information in connection with their duty to monitor the patient's progress (e.g., a prosecuting attorney who is withholding charges against the patient, a court granting pretrial or posttrial release, probation or parole officers responsible for supervision of the patient); and

(2) The patient has signed a written consent meeting the requirements of Sec. 2.31 (except paragraph (a)(8) which is inconsistent with the revocation provisions of paragraph (c) of this section) and the requirements of paragraphs (b) and (c) of this section.

(b) Duration of consent. The written consent must state the period during which it remains in effect. This period must be reasonable, taking into account:

(1) The anticipated length of the treatment;

(2) The type of criminal proceeding involved, the need for the information in connection with the final disposition of that proceeding, and when the final disposition will occur; and

(3) Such other factors as the program, the patient, and the person(s) who will receive the disclosure consider pertinent.

(c) Revocation of consent. The written consent must state that it is revocable upon the passage of a specified amount of time or the occurrence of a specified, ascertainable event. The time or occurrence upon which consent becomes revocable may be no later than the final disposition of the conditional release or other action in connection with which consent was given.

(d) Restrictions on redisclosure and use. A person who receives patient information under this section may redisclose and use it only to carry out that person's official duties with regard to the patient's conditional release or other action in connection with which the consent was given.

Subpart D—Disclosures Without Patient Consent

Sec. 2.51 Medical emergencies.

(a) General Rule. Under the procedures required by paragraph (c) of this section, patient identifying information may be disclosed to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.

(b) Special Rule. Patient identifying information may be disclosed to medical personnel of the Food and Drug Administration (FDA) who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA jurisdiction, and that the information will be used for the exclusive purpose of notifying patients or their physicians of potential dangers.

(c) Procedures. Immediately following disclosure, the program shall document the disclosure in the patient's records, setting forth in writing:

- (1) The name of the medical personnel to whom disclosure was made and their affiliation with any health care facility;
- (2) The name of the individual making the disclosure;
- (3) The date and time of the disclosure; and
- (4) The nature of the emergency (or error, if the report was to FDA).

(Approved by the Office of Management and Budget under control number 0930-0099)

Sec. 2.52 Research activities.

(a) Patient identifying information may be disclosed for the purpose of conducting scientific research if the program director makes a determination that the recipient of the patient identifying information:

- (1) Is qualified to conduct the research;
- (2) Has a research protocol under which the patient identifying information:
 - (i) Will be maintained in accordance with the security requirements of Sec. 2.16 of these regulations (or more stringent requirements); and
 - (ii) Will not be redisclosed except as permitted under paragraph (b) of this section; and
- (3) Has provided a satisfactory written statement that a group of three or more individuals who are independent of the research project has reviewed the protocol and determined that:
 - (i) The rights and welfare of patients will be adequately protected; and
 - (ii) The risks in disclosing patient identifying information are outweighed by the potential benefits of the research.

(b) A person conducting research may disclose patient identifying information obtained under paragraph (a) of this section only back to the program from which that information was obtained and may not identify any individual patient in any report of that research or otherwise disclose patient identities.

[52 FR 21809, June 9, 1987, as amended at 52 FR 41997, Nov. 2, 1987]

Sec. 2.53 Audit and evaluation activities.

(a) Records not copied or removed. If patient records are not copied or removed, patient identifying information may be disclosed in the course of a review of records on program premises to any person who agrees in writing to comply with the limitations on redisclosure and use in paragraph (d) of this section and who:

(1) Performs the audit or evaluation activity on behalf of:

(i) Any Federal, State, or local governmental agency which provides financial assistance to the program or is authorized by law to regulate its activities; or

(ii) Any private person which provides financial assistance to the program, which is a third party payer covering patients in the program, or which is a peer review organization performing a utilization or quality control review; or

(2) Is determined by the program director to be qualified to conduct the audit or evaluation activities.

(b) Copying or removal of records. Records containing patient identifying information may be copied or removed from program premises by any person who:

(1) Agrees in writing to:

(i) Maintain the patient identifying information in accordance with the security requirements provided in Sec. 2.16 of these regulations (or more stringent requirements);

(ii) Destroy all the patient identifying information upon completion of the audit or evaluation; and

(iii) Comply with the limitations on disclosure and use in paragraph (d) of this section; and

(2) Performs the audit or evaluation activity on behalf of:

(i) Any Federal, State, or local governmental agency which provides financial assistance to the program or is authorized by law to regulate its activities; or

(ii) Any private person which provides financial assistance to the program, which is a third party payer covering patients in the program, or which is a peer review organization performing a utilization or quality control review.

(c) Medicare or Medicaid audit or evaluation. (1) For purposes of Medicare or Medicaid audit or evaluation under this section, audit or evaluation includes a civil or administrative investigation of the program by any Federal, State, or local agency responsible for oversight of the Medicare or Medicaid program and includes administrative enforcement, against the program by the agency, of any remedy authorized by law to be imposed as a result of the findings of the investigation.

(2) Consistent with the definition of program in Sec. 2.11, program includes an employee of, or provider of medical services under, the program when the employee or provider is the subject of a civil investigation or administrative remedy, as those terms are used in paragraph (c)(1) of this section.

(3) If a disclosure to a person is authorized under this section for a Medicare or Medicaid audit or evaluation, including a civil investigation or administrative remedy, as those terms are used in paragraph (c)(1) of this section, then a peer review organization which obtains the information under paragraph (a) or (b) may disclose the information to that person but only for purposes of Medicare or Medicaid audit or evaluation.

(4) The provisions of this paragraph do not authorize the agency, the program, or any other person to disclose or use patient identifying information obtained during the audit or evaluation for any purposes other than those necessary to complete the Medicare or Medicaid audit or evaluation activity as specified in this paragraph.

(d) Limitations on disclosure and use. Except as provided in paragraph (c) of this section, patient identifying information disclosed under this section may be disclosed only back to the program from which it was obtained and used only to carry out an audit or evaluation purpose or to investigate or prosecute criminal or other activities, as authorized by a court order entered under Sec. 2.66 of these regulations.

Subpart E—Court Orders Authorizing Disclosure and Use

Sec. 2.61 Legal effect of order.

(a) Effect. An order of a court of competent jurisdiction entered under this subpart is a unique kind of court order. Its only purpose is to authorize a disclosure or use of patient information which would otherwise be prohibited by 42 U.S.C. 290ee-3, 42 U.S.C. 290dd-3 and these regulations. Such an order does not compel disclosure. A subpoena or a similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same time as and accompany an authorizing court order entered under these regulations.

(b) Examples. (1) A person holding records subject to these regulations receives a subpoena for those records: a response to the subpoena is not permitted under the regulations unless an authorizing court order is entered. The person may not disclose the records in response to the subpoena unless a court of competent jurisdiction enters an authorizing order under these regulations.

(2) An authorizing court order is entered under these regulations, but the person authorized does not want to make the disclosure. If there is no subpoena or other compulsory process or a subpoena for the records has expired or been quashed, that person may refuse to make the disclosure. Upon the entry of a valid subpoena or other compulsory process the person authorized to disclose must disclose, unless there is a valid legal defense to the process other than the confidentiality restrictions of these regulations.

[52 FR 21809, June 9, 1987; 52 FR 42061, Nov. 2, 1987]

Sec. 2.62 Order not applicable to records disclosed without consent to researchers, auditors and evaluators.

A court order under these regulations may not authorize qualified personnel, who have received patient identifying information without consent for the purpose of conducting research, audit or evaluation, to disclose that information or use it to conduct any criminal investigation or prosecution of a patient. However, a court order under Sec. 2.66 may authorize disclosure and use of records to investigate or prosecute qualified personnel holding the records.

Sec. 2.63 Confidential communications.

(a) A court order under these regulations may authorize disclosure of confidential communications made by a patient to a program in the course of diagnosis, treatment, or referral for treatment only if:

(1) The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;

(2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse and neglect; or

(3) The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.

(b) [Reserved]

Sec. 2.64 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.

(a) Application. An order authorizing the disclosure of patient records for purposes other than criminal investigation or prosecution may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which it appears that the patient records are needed to provide evidence. An application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the patient is the applicant or has given a written consent (meeting the requirements of these regulations) to disclosure or the court has ordered the record of the proceeding sealed from public scrutiny.

(b) Notice. The patient and the person holding the records from whom disclosure is sought must be given:

(1) Adequate notice in a manner which will not disclose patient identifying information to other persons; and

(2) An opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order.

(c) Review of evidence: Conduct of hearing. Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or the person holding the record, unless the patient requests an open hearing in a manner which meets the written consent requirements of these regulations. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) Criteria for entry of order. An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find that:

(1) Other ways of obtaining the information are not available or would not be effective; and

(2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.

(e) Content of order. An order authorizing a disclosure must:

(1) Limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those persons whose need for information is the basis for the order; and

(3) Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and the treatment services; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

Sec. 2.65 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.

(a) Application. An order authorizing the disclosure or use of patient records to criminally investigate or prosecute a patient may be applied for by the person holding the records or by any person conducting investigative or prosecutorial activities with respect to the enforcement of criminal laws. The application may be filed separately, as part of an application for a subpoena or other compulsory process, or in a pending criminal action. An application must use a fictitious name such as John Doe, to refer to any patient and may not contain or otherwise disclose patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny.

(b) Notice and hearing. Unless an order under Sec. 2.66 is sought with an order under this section, the person holding the records must be given:

(1) Adequate notice (in a manner which will not disclose patient identifying information to third parties) of an application by a person performing a law enforcement function;

(2) An opportunity to appear and be heard for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order; and

(3) An opportunity to be represented by counsel independent of counsel for an applicant who is a person performing a law enforcement function.

(c) Review of evidence: Conduct of hearings. Any oral argument, review of evidence, or hearing on the application shall be held in the judge's chambers or in some other manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceedings, the patient, or the person holding the records. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) Criteria. A court may authorize the disclosure and use of patient records for the purpose of conducting a criminal investigation or prosecution of a patient only if the court finds that all of the following criteria are met:

(1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.

(2) There is a reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.

(3) Other ways of obtaining the information are not available or would not be effective.

(4) The potential injury to the patient, to the physician-patient relationship and to the ability of the program to provide services to other patients is outweighed by the public interest and the need for the disclosure.

(5) If the applicant is a person performing a law enforcement function that:

(i) The person holding the records has been afforded the opportunity to be represented by independent counsel; and

(ii) Any person holding the records which is an entity within Federal, State, or local government has in fact been represented by counsel independent of the applicant.

(e) Content of order. Any order authorizing a disclosure or use of patient records under this section must:

(1) Limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting, the investigation or prosecution, and limit their use of the records to investigation and prosecution of extremely serious crime or suspected crime specified in the application; and

(3) Include such other measures as are necessary to limit disclosure and use to the fulfillment of only that public interest and need found by the court.

[52 FR 21809, June 9, 1987; 52 FR 42061, Nov. 2, 1987]

Sec. 2.66 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute a program or the person holding the records.

(a) Application. (1) An order authorizing the disclosure or use of patient records to criminally or administratively investigate or prosecute a program or the person holding the records (or employees or agents of that program or person) may be applied for by any administrative, regulatory, supervisory, investigative, law enforcement, or prosecutorial agency having jurisdiction over the program's or person's activities.

(2) The application may be filed separately or as part of a pending civil or criminal action against a program or the person holding the records (or agents or employees of the program or person) in which it appears that the patient records are needed to provide material evidence. The application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny or the patient has given a written consent (meeting the requirements of Sec. 2.31 of these regulations) to that disclosure.

(b) Notice not required. An application under this section may, in the discretion of the court, be granted without notice. Although no express notice is required to the program, to the person holding the records, or to any patient whose records are to be disclosed, upon implementation of an order so granted any of the above persons must be afforded an opportunity to seek revocation or amendment of that order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order.

(c) Requirements for order. An order under this section must be entered in accordance with, and comply with the requirements of, paragraphs (d) and (e) of Sec. 2.64 of these regulations.

(d) Limitations on disclosure and use of patient identifying information: (1) An order entered under this section must require the deletion of patient identifying information from any documents made available to the public.

(2) No information obtained under this section may be used to conduct any investigation or prosecution of a patient, or be used as the basis for an application for an order under Sec. 2.65 of these regulations.

Sec. 2.67 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of a program.

(a) Application. A court order authorizing the placement of an undercover agent or informant in a program as an employee or patient may be applied for by any law enforcement or prosecutorial agency which has reason to believe that employees or agents of the program are engaged in criminal misconduct.

(b) Notice. The program director must be given adequate notice of the application and an opportunity to appear and be heard (for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order), unless the application asserts a belief that:

(1) The program director is involved in the criminal activities to be investigated by the undercover agent or informant; or

(2) The program director will intentionally or unintentionally disclose the proposed placement of an undercover agent or informant to the employees or agents who are suspected of criminal activities.

(c) Criteria. An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find:

(1) There is reason to believe that an employee or agent of the program is engaged in criminal activity;

(2) Other ways of obtaining evidence of this criminal activity are not available or would not be effective; and

(3) The public interest and need for the placement of an undercover agent or informant in the program outweigh the potential injury to patients of the program, physician-patient relationships and the treatment services.

(d) Content of order. An order authorizing the placement of an undercover agent or informant in a program must:

(1) Specifically authorize the placement of an undercover agent or an informant;

(2) Limit the total period of the placement to six months;

(3) Prohibit the undercover agent or informant from disclosing any patient identifying information obtained from the placement except as necessary to criminally investigate or prosecute employees or agents of the program; and

(4) Include any other measures which are appropriate to limit any potential disruption of the program by the placement and any potential for a real or apparent breach of patient confidentiality; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

(e) Limitation on use of information. No information obtained by an undercover agent or informant placed under this section may be used to criminally investigate or prosecute any patient or as the basis for an application for an order under Sec. 2.65 of these regulations.

CALIFORNIA CODES
EDUCATION CODE
SECTION 49602

49602. Any information of a personal nature disclosed by a pupil 12 years of age or older in the process of receiving counseling from a school counselor as specified in Section 49600 is confidential. Any information of a personal nature disclosed to a school counselor by a parent or guardian of a pupil who is 12 years of age or older and who is in the process of receiving counseling from a school counselor as specified in Section 49600 is confidential. The information shall not become part of the pupil record, as defined in subdivision (b) of Section 49061, without the written consent of the person who disclosed the confidential information. The information shall not be revealed, released, discussed, or referred to, except as follows:

(a) Discussion with psychotherapists as defined by Section 1010 of the Evidence Code, other health care providers, or the school nurse, for the sole purpose of referring the pupil for treatment.

(b) Reporting of child abuse or neglect as required by Article 2.5 (commencing with Section 11165) of Chapter 2 of Title 1 of Part 4 of the Penal Code.

(c) Reporting information to the principal or parents of the pupil when the school counselor has reasonable cause to believe that disclosure is necessary to avert a clear and present danger to the health, safety, or welfare of the pupil or the following other persons living in the school community: administrators, teachers, school staff, parents, pupils, and other school community members.

(d) Reporting information to the principal, other persons inside the school, as necessary, the parents of the pupil, and other persons outside the school when the pupil indicates that a crime, involving the likelihood of personal injury or significant or substantial property losses, will be or has been committed.

(e) Reporting information to one or more persons specified in a written waiver after this written waiver of confidence is read and signed by the pupil and preserved in the pupil's file.

Notwithstanding the provisions of this section, a school counselor shall not disclose information deemed to be confidential pursuant to this section to the parents of the pupil when the school counselor has reasonable cause to believe that the disclosure would result in a clear and present danger to the health, safety, or welfare of the pupil.

Notwithstanding the provisions of this section, a school counselor shall disclose information deemed to be confidential pursuant to this section to law enforcement agencies when ordered to do so by order of a court of law, to aid in the investigation of a crime, or when ordered to testify in any administrative or judicial proceeding.

Nothing in this section shall be deemed to limit access to pupil records as provided in Section 49076.

Nothing in this section shall be deemed to limit the counselor from conferring with other school staff, as appropriate, regarding modification of the pupil's academic program.

It is the intent of the Legislature that counselors use the privilege of confidentiality under this section to assist the pupil whenever possible to communicate more effectively with parents, school staff, and others.

No person required by this section to keep information discussed during counseling confidential shall incur any civil or criminal liability as a result of keeping that information confidential.

As used in this section, “information of a personal nature” does not include routine objective information related to academic and career counseling.

APPENDIX B

Sample County Children's System of Care

SAMPLE COUNTY CHILDREN’S SYSTEM OF CARE (Form #1)

CONSENT FOR RELEASE OF CONFIDENTIAL
INFORMATION AND/OR RECORDS TO THE
MULTIDISCIPLINARY SERVICES TEAM

This consent authorizes the gathering, exchange and release of information and/or records for integrated children’s services programs, as defined and provided for in Section 18986.46, et seq., of the California Welfare and Institutions Code, for purposes of developing a plan of comprehensive services and making appropriate referrals for children and their families within the Children’s System of Care Program.

I, _____, as the (parent, guardian or legally authorized representative) of _____ hereby authorize the release and exchange of confidential information and/or records to and among members of the multidisciplinary team for the specific purpose of formulating, providing, verifying and coordinating service plans for the above-named child, the minor family members listed below, and myself.

NAME

MY RELATIONSHIP TO THEM

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

[Please print name of person whose information and/or records are released (including the signing adult), the familial relationship of the adult signing this release to the person listed, and whether the adult signing is the listed person’s parent, guardian, or legally authorized representative.]

I understand that the participating agencies making up the multidisciplinary services team include the following:

- _____ COUNTY HEALTH AGENCY
 - _____ Drug & Alcohol Division
 - _____ Mental Health Division
 - _____ Public Health Division
- _____ COUNTY PROBATION DEPARTMENT
- _____ COUNTY SOCIAL SERVICES AGENCY
 - _____ Child Protective Services Division
- _____ DEPARTMENT OF EDUCATION
- _____ SCHOOL DISTRICT OF MINOR CHILDREN’S ATTENDANCE and/or Potential
- _____ SCHOOL DISTRICT OF MINOR CHILDREN’S ATTENDANCE
- _____ SOCIAL SERVICES

_____ COUNTY LEARNING CENTER
_____ CENTER FOR EVALUATION AND RESEARCH (CER)
_____ OTHER
_____ OTHER

I hereby authorize the agencies I have initialed above to view, copy, release and exchange the following information and/or records via oral conversations, written reports and/or electronic transmission:

- () Summary of related medical, psychiatric, developmental, educational, drug and alcohol, psycho-social, histories.
- () Medical diagnosis, assessment and evaluation.
- () Psychiatric diagnosis, assessment and evaluation.
- () Drug and/or alcohol abuse.
- () Toxicology screens.
- () Service treatment plans.
- () Information in the System of Care electronic data base system.
- () Information contained in the school confidential file.
- () Information contained in the school cumulative file.
- () Educational assessment and behavioral reports, including school observation and educational testing.
- () Other _____

I understand that my records are protected under State and Federal confidentiality statutes/regulations and can not be disclosed without my written consent, unless otherwise provided for in the statutes/regulations. I also understand that I may revoke this authorization at any time, except to the extent that action has been taken in reliance on it, and that in any event **THIS AUTHORIZATION EXPIRES AUTOMATICALLY ONE YEAR AFTER THIS DATE.**

Client confidentiality will be maintained according to the California Education Code Section 49069; California Welfare & Institutions Code Sections 4514, 5328 and 10850, 42 CFR, Part 2 Drug/Alcohol Code. All children 12 years of age and older must give informed consent to release drug/alcohol records.

I UNDERSTAND THAT, NOTWITHSTANDING THEIR PARTICIPATION IN THE MULTIDISCIPLINARY SERVICES TEAM, SOME EMPLOYEES OF THE PARTICIPATING AGENCIES HAVE A PRE-EXISTING DUTY AS MANDATORY REPORTERS TO RELEASE CONFIDENTIAL INFORMATION; THEIR DUTY REMAINS WHOLLY UNAFFECTED BY PARTICIPATION IN THE MULTIDISCIPLINARY SERVICES TEAM.

I specifically understand that:

1. If the client's child care custodian possesses a reasonable suspicion that the client has been abused, then he/she is a mandated reporter as provided in Penal Code Section 11166 and is

required to report the same to the child protective services agency and/or the law enforcement agency as appropriate.

- 2. If the client, in the opinion of the client’s psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims as provided in subdivision (r) of Section 5328 of the Welfare & Institutions Code, then both the person(s) and law enforcement will be notified by the psychotherapist.

THE OBLIGATIONS OF MANDATORY REPORTERS ARE NEITHER VITIATED BY THIS RELEASE NOR THE PARTICIPATION OF SUCH MANDATORY REPORTERS IN THIS MULTIDISCIPLINARY SERVICES TEAM.

Every member of the multidisciplinary service team who receives information or records on the client serviced is under the same privacy and confidentiality penalties as the person disclosing or providing the information or records. The information or records obtained pursuant to the authorization shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

I release the participating agencies and employees of the participating agencies listed above from any and all liability arising from this release of records and/or information.

I hereby acknowledge receipt of a photocopy of this authorization.

Executed on _____ 19 __, at _____
City County State

Client Signature: _____

Parent/Guardian Signature: _____

Referring Agency Member Signature: _____

The client has the right to receive a copy of this authorization (Civil Code 56.10).
A photocopy of this document is as valid as the original.

**SAMPLE COUNTY CHILDREN’S SYSTEM OF CARE (Form #2)
Authorization for Interagency
Exchange of Confidential Information
In Court Dependency and/or Court Ward Cases
And Predependency and/or Preward Referrals from the Court**

The purpose of this authorization is to allow the gathering of information, develop a plan of comprehensive services and make referrals for children who are Court Dependents and/or Court Wards and their families, predependents and/or preward referrals from the Court when consent has been given, and/or Cal-WORKs referrals from the Department of Social Services.

I hereby give my permission for release and exchange of confidential information regarding:

Client Name: _____ **Birth Date:** _____

For the purpose of providing, verifying and coordinating services, place your initials in front of highlighted departments that provide primary services through the Children’s System of Care. Other boxes may be checked and initialed to allow an exchange of information with them as needed.

COUNTY AGENCIES

<p><u>HEALTH AGENCY</u></p> <p>___ <input type="checkbox"/> Mental Health ___ <input type="checkbox"/> Public Health ___ <input type="checkbox"/> Drug & Alcohol ___ <input type="checkbox"/> Early Response Team</p> <p><u>SOCIAL SERVICES</u></p> <p>___ <input type="checkbox"/> Children’s Protective Services ___ <input type="checkbox"/> CalWORKs Employment Service ___ <input type="checkbox"/> Adult Protective Services ___ <input type="checkbox"/> CalWORKs Eligibility Services</p> <p><u>CRIMINAL JUSTICE</u></p> <p>___ <input type="checkbox"/> Probation Department ___ <input type="checkbox"/> Law Enforcement ___ <input type="checkbox"/> County Courts ___ <input type="checkbox"/> Parole Agent</p> <p><u>EDUCATION</u></p> <p>___ <input type="checkbox"/> Department of Education ___ <input type="checkbox"/> Schools (former, current, future) _____ ___ <input type="checkbox"/> Healthy Start ___ <input type="checkbox"/> Head Start ___ <input type="checkbox"/> Even Start ___ <input type="checkbox"/> Other _____</p>	<p><u>HOSPITAL</u></p> <p>___ <input type="checkbox"/> Mother/Baby Clinic ___ <input type="checkbox"/> Home Health ___ <input type="checkbox"/> WIC Program ___ <input type="checkbox"/> Home Help for Hispanic Mothers</p> <p><u>OTHER HEALTH</u></p> <p>___ <input type="checkbox"/> Health Center ___ <input type="checkbox"/> Dental Clinic ___ <input type="checkbox"/> Other Clinic ___ <input type="checkbox"/> Dentist ___ <input type="checkbox"/> Primary Physician(s) _____</p> <p><u>OTHER SOCIAL SERVICES</u></p> <p>___ <input type="checkbox"/> Recovery Center ___ <input type="checkbox"/> Alternatives to Violence ___ <input type="checkbox"/> Family Service Agency ___ <input type="checkbox"/> Job Training Center ___ <input type="checkbox"/> E.D.D. ___ <input type="checkbox"/> County Learning Center ___ <input type="checkbox"/> Whatever it Takes (WIT) Program ___ <input type="checkbox"/> Department of Rehabilitation ___ <input type="checkbox"/> Far Northern Regional Center ___ <input type="checkbox"/> Kid Power ___ <input type="checkbox"/> Other _____</p>	<p><u>OTHER SOCIAL SERVICES (cont'd)</u></p> <p>___ <input type="checkbox"/> Social Service ___ <input type="checkbox"/> Child Care Provider(s): _____ ___ <input type="checkbox"/> Child Care Referral and Education ___ <input type="checkbox"/> Residential Care Provider(s): _____</p> <p><u>OTHER</u></p> <p>___ <input type="checkbox"/> Center for Evaluation & Research ___ <input type="checkbox"/> Other _____ ___ <input type="checkbox"/> Other _____</p>
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I hereby authorize the agencies initialed above to exchange the following information via verbal communications, written reports and/or electronic transmission (as selected by initialization):

<p>___ <input type="checkbox"/> Summary of related medical, psychiatric, developmental, educational, drug and alcohol, psychosocial histories.</p> <p>___ <input type="checkbox"/> Law enforcement contacts.</p> <p>___ <input type="checkbox"/> Toxicology screens.</p> <p>___ <input type="checkbox"/> Status of Medi-Cal eligibility.</p> <p>___ <input type="checkbox"/> Other _____</p> <p>___ <input type="checkbox"/> Other _____</p>	<p>___ <input type="checkbox"/> Info. contained in the school confidential file.</p> <p>___ <input type="checkbox"/> Info. contained in the school cumulative file.</p> <p>___ <input type="checkbox"/> Educational assessment & behavioral reports, including school observation and educational testing.</p> <p>___ <input type="checkbox"/> Pertinent disposition of legal status.</p> <p>___ <input type="checkbox"/> Progress in court ordered or a voluntary treatment plan.</p> <p>___ <input type="checkbox"/> Other _____</p> <p>___ <input type="checkbox"/> Other _____</p>
--	--

I understand that my records are protected under State and Federal Confidentiality Regulations and cannot be disclosed without my written consent unless otherwise provided for in the Regulations. I also understand that I may revoke this consent at any time, except to the extent that action has been taken in reliance on it, and that in any event **THIS CONSENT EXPIRES AUTOMATICALLY ONE YEAR AFTER THIS DATE**. Confidentiality of client will be maintained according to the Education Code Section 49069; Calif. Welfare & Institutions Code Sections 4514, 5328 and 10850, 42CFR, Part 2 Drug/Alcohol Regulations. All children 12 years of age and older must give informed consent to release Drug/Alcohol records.

Service discussed within the scope of this authorization is confidential, with these exceptions: (1) mandates reporters are compelled by law to inform an appropriate other person(s) if they hear and believe that you or a family member are in danger of hurting yourself or someone else; (2) if there is reasonable suspicion that a child, dependent adult and/or elderly adult has been abused; and (3) under the Tarasoff's Statute if you have made a threat to harm an identified victim, both the victim and law enforcement will be notified of this threat.

Client Signature: _____

Parent/Guardian Signature: _____

Staff Signature: _____

Referring Agency: _____

Date Executed: _____

The client has the right to receive a copy of this authorization (Civil Code 56.10).
A photocopy of this document is as valid as the original.

SAMPLE COUNTY CHILDREN’S SYSTEM OF CARE**TEAM:** _____**DATE:** _____**CONFIDENTIALITY STATEMENT**

The Multidisciplinary Treatment Team is meeting for the purpose of discussing families with children who are at risk, and for the purpose of developing treatment strategies that will reduce that risk. Each person participating in this meeting is governed by laws of confidentiality. Welfare and Institutions Codes, Drug/Alcohol Codes, Education Codes, and Penal Codes all require that the information shared in the course of this meeting be confidential and shall only be used for the purpose of developing and implementing interventions that will reduce the risk to the children being discussed. Every member of this team who receives information today shall be under the same privacy and confidentiality obligations and subject to the same confidentiality penalties as the person disclosing or providing the information.

As indicated by my initials on the attendance sheet, I verify that I have read, understood, and agree to abide by the Confidentiality Statement listed above. I understand that one or more of the above set codes have penalties attached to improper disclosure of material I hear today.

**SAMPLE COUNTY CHILDREN’S SYSTEM OF CARE
Multidisciplinary Team Form**

NAME	AGENCY/ADDRESS	PHONE	FAX	PRESENT

MEMORANDUM OF UNDERSTANDING

WHEREAS, the Children's Mental Health Services Act (Welfare and Institutions Code § 5852 et seq.) establishes an interagency system of care for children with serious emotional and behavioral disturbances; and

WHEREAS, the County has been awarded funds to implement a comprehensive system for the delivery of mental health services to children with serious emotional disturbance and to their families; and

WHEREAS, Welfare and Institutions Code § 5866 provides that the local mental health director shall develop written interagency agreements or memoranda of understanding with the agencies as necessary; and

WHEREAS, Welfare and Institutions Code § 18986.46 allows members of a multidisciplinary services team within an integrated children's services program to share information and/or records relevant to the formation of an integrated service plan and to the delivery of services to children and their families so long as the minor or his/her legal representative, including the court which has jurisdiction over those children who are wards or dependents of the court, consent to such a sharing of information and/or records; and

WHEREAS, Welfare and Institutions Code § 18986.46 provides that the sharing of information between members of a multidisciplinary services team within an integrated children's services program shall be governed by memoranda of understanding between the agencies represented on the multidisciplinary team; and

WHEREAS, the following agencies are members of the multidisciplinary services team within the integrated children's services program established by the County Children's Systems of Care (SOC): County Health Agency (Drug and Alcohol Division, Mental Health Division and Public Health Division); County Probation Department; County Department of Social Services (Children's Protective Services Division); County Department of Education; and all School Districts within the County; and

WHEREAS, Welfare and Institutions Code § 827 makes confidential all information pertaining to minors who are alleged to be victims of abuse or neglect; and

WHEREAS, Welfare and Institutions Code § 830 allows members of a multidisciplinary personnel team engaged in the prevention, identification, treatment of child abuse to disclose and exchange information and writings to and with one another relating to any incidents of child abuse that may also be a part of a juvenile court record or otherwise designated as confidential under state law if the member of the Team having that information or writing reasonably believes it is generally relevant to the prevention, identification, or treatment of child abuse; and

WHEREAS, Welfare and Institutions Code § 830 and Welfare and Institutions Code § 10850.1 also provide that all discussions relative to the disclosure or exchange of any such information or writings during team meetings are confidential and, notwithstanding any other provision of law, testimony concerning any such discussion is not admissible in any criminal, civil, or juvenile court proceeding; and

WHEREAS, Welfare and Institutions Code § 5328 provides that all information and records obtained in the course of providing mental health services under Division 4, Division 4.1, Division 4.5, Division 5, Division 6, or Division 7 of the Welfare and Institutions Code, to either voluntary or involuntary recipients of such mental health services shall be confidential; and

WHEREAS, subdivision (1) of Welfare and Institutions Code § 5328 provides that information and records may be disclosed to members of a multidisciplinary personnel team when such information and records are relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Welfare and Institutions Code § 18950, et seq.; and

WHEREAS, Welfare and Institutions Code § 10850 makes confidential all client information collected and maintained by the Department of Social Services; and

WHEREAS, Welfare and Institutions Code § 10850.1 provides that the activities of a multidisciplinary personnel team engaged in the prevention, identification, and treatment of child abuse are activities performed in the administration of public social

services, and a member of a team may disclose and exchange any information or writing that is also kept or maintained in connection with any program of public social services or otherwise designated as confidential under state law which he or she reasonably believes is relevant to the prevention, identification, or treatment of child abuse or the abuse of elder or dependent persons to other members of the team; and

WHEREAS, Welfare and Institutions Code § 18951 defines “Multidisciplinary personnel” to mean any team of three or more persons who are trained in the prevention, identification and treatment of child abuse and neglect cases who are qualified to provide a broad range of services related to child abuse and that the team may include, but not be limited to:

1. Psychiatrists, psychologists or other trained counseling personnel.
2. Police officers or other law enforcement agents.
3. Medical personnel with sufficient training to provide health services.
4. Social workers with experience or training in child abuse prevention.
5. Any public or private school teacher, administrative officer, supervisor of child welfare and attendance, or certified pupil personnel employee; and

WHEREAS, Welfare and Institutions Code § 18965 provides a person who is trained and qualified to serve on a multidisciplinary personnel team pursuant to subdivision (d) of Section 18951, whether or not the person is serving on a team, may be deemed, by the team, to be part of the team as necessary for the purpose of prevention, identification, management, or treatment of an abused child and his or her parents; that the designated team may deem a person to be a member of the team for a particular case, and that the team shall specify its reasons, in writing, for deeming that person to be a member of the team; and that the person, when deemed a member of the team, may receive and disclose information relevant to a particular case as though he or she were a member of the team;

NOW THEREFORE, the parties hereto agree as follows:

I. The Parties

This agreement is entered into and between the participating agencies that have assigned representatives to the Multidisciplinary Team as follows: County Health Agency (Drug and Alcohol Division, Mental Health Division and Public Health Division); County Probation Department; County Department of Social Services (Children's Protective Services Division); County Department of Education; and all School Districts within the County. An agency may be added to this Agreement, at the discretion of the Multidisciplinary Team, by executing this Agreement.

II. Confidentiality Policy

Multidisciplinary Team staff and participating agencies will determine the difference between confidential information and confidential records relative to the delivery of services in a multidisciplinary setting. For purposes of this policy, the following definitions will apply:

A. Confidential Information: Confidential information is data regarding a family or an individual family member which is shared among agency staff and is obtained through verbal communication or reviewing of confidential manual or automated participant records. This information is shared across agency lines in order to develop service plans for a client or client family.

B. Confidential Records: Confidential records are handwritten, typed or printed documents regarding a family or an individual family member which is maintained by one of the participating agencies or the County Children's Systems of Care (SOC).

The parties agree that, prior to sharing information between members of the multidisciplinary team staff and participating agencies, a written consent shall be obtained from the minor and/or his/her legal representative.

The parties agree to be bound and abide by the confidentiality requirements of Welfare and Institutions Code § § 827, 830, 10850, and 10850.1, which collectively provide that all information and writings pertaining to the clients of the County Children's Systems of Care (SOC) be kept confidential and that all discussions by team members relative to the disclosure or exchange of any such information or writing are confidential and notwithstanding any other provision of law, testimony concerning any such discussion relative to such disclosures or exchanges of information or writing is not admissible in any criminal, civil, or juvenile court proceeding. This does not preclude the work product consisting of the recommendation of the Multidisciplinary Team in response to a referral and consent by the Court pursuant to Welfare & Institutions Code § 18986.46 where the Court has jurisdiction over the minor children who are wards or dependents.

III. Term

The term of this Agreement shall begin on the first date following execution by all parties and shall remain in full force and effect until terminated in writing by all parties. Any party may withdraw its participation in this Agreement by providing the County Children's Systems of Care (SOC) written notice of withdrawal.

IV. Relationship of Parties

It is understood that this Agreement is not intended to, and shall not be construed to, create a relationship of agent, servant, employee, partnership, joint venture or association.

V. Compliance With State or Federal Requirements

Each party to this Agreement will continue to be individually responsible to assure compliance with all State or Federal statutory, or regulatory requirements as established, specific to programs or services administered, managed or provided by each party.

VI. Liability

Each of the parties to this Agreement shall be solely liable for negligent or wrongful acts or omissions of its officers, agents and employees occurring in the performance hereof, and if a party becomes liable for any loss or damage as a result of the acts or omissions of its officers, agents and employees, it shall pay such loss or damage without contribution of the other parties.

VII. Entire Agreement

This Agreement constitutes the entire agreements between the participating agencies with respect to the subject matter hereof. This Agreement may be executed in any number of counter-parts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

DATED: _____

COUNTY HEALTH AGENCY

By: _____

DATED: _____

COUNTY PROBATION
DEPARTMENT

By: _____

DATED: _____

COUNTY DEPARTMENT OF
SOCIAL SERVICES

By: _____

DATED: _____

COUNTY DEPARTMENT OF
EDUCATION

By: _____

SAMPLE COUNTY INTERAGENCY PROTOCOL FOR CONFIDENTIALITY IN MULTIDISCIPLINARY TEAM CASE STAFFING

Agencies can successfully balance the privacy interests of clients and their own need for information sharing through a variety of means. These include information sharing authorized by Court Order and State or Federal statutes, consents to release of information, memoranda of understanding, interagency contracts and similar agreements. By using these mechanisms individually or in combination, agencies are able to share virtually all necessary information while protecting confidentiality.

The Multidisciplinary Teams will define their purpose as outlined in the individual grants: Children's System of Care, Whatever it Takes, and the Challenge Grant. The Healthy Start and Head Start Programs, school site Student Study Teams, the Perinatal Team, and Cal-Learn/AFLP, who do case conferencing, may also use the following protocol when they include County Staff in their Multidisciplinary Team (MDT) staffing of families.

The guiding principle shall be that all agencies must protect children and families from unauthorized disclosure of private information unless permitted by statute, Court Order, or a signed consent. The specific goal for sharing information is to enable staff to develop more effective coordinated family treatment plans, and to facilitate the monitoring of services by each agency involved to serve the needs of the community by planning the use of limited resources and to promote public safety.

NOTE: Confidentiality statutes and good agency practice emphasize that case managers collect, maintain, and share only the information directly relevant to their agency's involvement with the child or family. More information is not necessarily better, and may be irrelevant and damaging to the relationship with the client.

California statutes define Multidisciplinary Teams to include members who provide a wide range of services including educational, health, mental health, substance abuse prevention and treatment, child abuse prevention and treatment, and "any other service that will enhance the health, development, and well being of children and families." The statutes allow team members to "disclose to one another information and records, which are relevant to the prevention, identification, management, or treatment of an abused child and his or her parents."

APPLICABLE STATUTES:

§827(a) W&I enumerates who may inspect or receive copies of documents contained in Child Protective Services or Probation Office files on children who are subjects of Juvenile Court proceedings and specifies the rules regarding recipients' further dissemination of that information.

§830 W&I authorizes and limits disclosure of information and writings among members of Multidisciplinary Teams.

§4514(1) W&I authorizes disclosure of relevant information regarding a developmentally-delayed person to Multidisciplinary Team.

§5328(1) W&I authorizes disclosure of relevant information regarding Mental Health clients to Multidisciplinary Team.

§10850.1 W&I authorizes Public Social Services Workers to participate in Multidisciplinary Teams and to exchange information or writings kept or maintained in connection with any program of Public Social Services that the workers believe is relevant to the prevention, identification, or treatment of child abuse, to other members of the team.

§18951 W&I defines Multidisciplinary Teams and Multidisciplinary Team Members.

§18965 W&I authorizes disclosure of information and records to members of Multidisciplinary Team.

§18986.46 W&I authorizes disclosure of information and records by assigned members of Multidisciplinary Teams within integrated Children's Services programs under certain circumstances including where consent has been given. The section further provides for consent authority.

42 CFR, §2.11 permits Alcohol and Drug Programs to exchange information under a "Qualified Services Organization Agreement" (QSOA) that include by definition an organization that provides services to prevent or treat child abuse or neglect.

42 CFR, §2.12(c)(4) states restrictions on disclosures, does not apply to communication between an Alcohol/Drug Services Program and QSOA needed by the organization to provide services to the program.

42 CFR, §2.22 states conditions that allow releases of confidential information including upon a patients consent in writing.

42 CFR, §2.35 states conditions that allow disclosures to elements of the Criminal Justice System that has referred patients coupled with patients' written consents.

INFORMAL EXCHANGES OF INFORMATION

Hereafter, informal exchanges of information shall not occur. Whenever the professionals in charge of the case want to exchange information verbally with individual service providers, they shall have a consent signed by the client which will define the types of information that will be shared; i.e. attendance and progress in counseling or a treatment program, substance abuse relapse, school attendance and performance. The procedures to follow are outlined in Informed Consent: Releases and Waivers.

INFORMED CONSENT: Release and Waivers

Informed consent is the most common formal mechanism for exchanging information. Since the County System of Care includes a number of multidisciplinary teams operating under different sets of circumstances, it is necessary to have two informed consent release forms. The teams may be performing early intervention services for families to keep them out of the Juvenile Justice System and/or high cost placements. They also may be treating children and families already under Juvenile Court supervision and be acting as major resources to the Court.

I. Children and Families Not Under Court Supervision

1. The Consent for Release of Confidential Information and/or Records to the Multidisciplinary Services Team (CSOC #1):
This is to be used for families who are not yet in the Juvenile Justice System, but may well be without early intervention. The purpose of this release is to obtain client and family permission to share information specific to allow the multidisciplinary services teams to assess their needs, develop a treatment plan, and monitor the results. Information shared for this purpose through this release form may not be used for any other purpose including judicial inquiry except and unless further consents are obtained.
2. For these families, if an investigation of an alleged child abuse should occur in the future, the information shared in the multidisciplinary team meetings would not be available to be used in court through this release. This would be true for future Probation cases as well. If CPS or Probation felt that this knowledge was significant to their case, they would have to obtain the child and/or family's signed informed consent. The second consent form Authorization for Interagency Exchange of Confidential Information (CSOC #2) may be completed for that purpose with the appropriate boxes checked and confirmed by the client's initials. Copies of this release must then be served to individual agencies to obtain their specific and original information and may not be used to access Multidisciplinary Service Team records. The law very specifically prohibits the use of Multidisciplinary Team records from being used in any subsequent criminal justice actions.

II. Children and Families Under Court Supervision

1. When the child is a court dependent or court ward the Juvenile Court Judge can court order a release of information on behalf of the court dependent or ward.
2. The Judge can also under some circumstances order the child not yet a ward or dependent and/or parents to sign the necessary releases. The CSOC #2 would be the appropriate informed consent release form.
3. A properly executed CSOC #2 and a subpoena allows the Multidisciplinary Service Team Members to testify in court.
4. Under these circumstances the Juvenile Court Judge can request a Multi-Agency Treatment Team (MATT) I full evaluation and recommended treatment and placement plan.
5. With child and parental permission per a properly executed CSOC #2 form the Judge could also make a referral to MATT I even for children and families not yet under the Court's supervision, but the Court believes early intervention may prevent further court action.
6. If information is sought only for the child, his/her treatment, and how the parents interacted in that treatment then the CSOC #2 should be completed on the child. Appropriate boxes must be checked and initialed by the client if they are twelve or older and could have legally obtained treatment without their parents permission. It must be signed by the parent or parents if they had to give permission for that treatment to occur. Normally it is best to get both signatures whenever possible.
7. If information is sought on the parent or parents and their records of treatment then they must each be named on separate CSOC #2 forms as clients, and they must sign for themselves. Neither the CSOC #1 release nor the child's CSOC #2 may be used to obtain information about the parents' treatment history. Treatment in this instance means drug/alcohol, mental health, public health or any medical treatment. Each of these treatments should be defined generically and broadly, for example, mental health treatment could refer to services from CHA Mental Health, Rape Crisis, Alternatives to Violence, Family Services Agency, etc. and consent for disclosure shall be obtained by each such agency.

APPLICABLE COURT ORDERS:

On October 10, 1997, pursuant to Welfare and Institutions Code 827(a) and T.N.G. v. Superior Court, Judge Dennis E. Murray, Judge of the Tehama County Juvenile Court, issued a Minute Order regarding the Release of Juvenile Information. See attached copy.

In Dependency cases, the Juvenile Court by standard order has done the following:

1. The Court authorizes the Director of Social Services to make any and all appropriate referrals, release Juvenile Court records, unless privileged, and exchange family background, medical, developmental, psychological, or scholastic information contained within the Department of Social Services' records as may be necessary to obtain services for the minor and the parents ordered by this Court.
2. Directed that the minor and the minor's parents or guardians are to sign a Release of Information form so that the Social Worker and service providers may exchange information, and the service providers may provide written evaluations which shall include any mental health and drug/alcohol history, treatment plans, progress reports, and/or testimony before the Court in contested matters.

In Delinquency cases, families are required to sign forms for the release and exchange of information between the Probation Department and service providers, specifying the kind of information that is to be shared, including prior mental health history, and for what purpose the exchange of information is needed.

APPLICABLE CASE LAW:

Tarasoff vs. Regents of the University of California (1976) specifies that when a Mental Health therapist determines that his client presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger and therefore has the duty to protect third parties.

Steps taken by the therapist may include warning the intended victim or others likely to apprise the victim of the danger, to notify the police, or whatever steps are reasonably necessary under the circumstances.

INTERAGENCY PROTOCOL FOR Multidisciplinary Team (MDT) INFORMATION SHARING:

1. Each participating agency will designate an individual and an alternate to regularly attend and represent the agency at the MDT.

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2. “Multidisciplinary personnel” means a team of three or more persons who are trained in the prevention, identification, and treatment of child abuse and neglect, and who are qualified to provide a broad range of services related to child abuse. The team may include but not be limited to:
 - a. Psychiatrists, psychologists, or other trained counseling personnel.
 - b. Police officers or other law enforcement agents.
 - c. Medical personnel with sufficient training to perform health services.
 - d. Social Workers with experience or training in child abuse prevention.
 - e. Any public or private school teacher, administrative officer, supervisor of Child Welfare and Attendance, or certified pupil personnel employee.
 3. During a regularly scheduled team meeting, team members may share any information relevant to the prevention, identification, or treatment of children and their families at risk of abuse or neglect.
 4. Other participants not normally designated as a member of the team must be identified and deemed a member of the team when they attend a meeting, which is for the express purpose of discussing a particular child and his or her family with whom they are working.
 5. When children or families to be discussed are placed on the agenda, a referral form will be completed by the referring line worker indicating the purpose of the MDT staffing. The appropriate release forms shall also be signed by the child and/or the parent as part of the referral process.
 6. Recordings of the MDT meetings will be limited to:
 - a. The referral form and appropriate releases.
 - b. The purposes of the staffing, i.e. need for out-of-home placement, development of a family treatment plan, need for coordination of services between service providers, and case plan revisions.
 - c. Documentation of meeting participants and task assignments.
 - d. Review dates.
 - e. Information needed to evaluate programs as required by individual grants awarded to any of the participating agencies.
 7. All discussions or exchange of information or records during team meetings are confidential and may not be shared for any purpose outside the meeting, except by the signed release of the client and/or parent which spells out that purpose as outlined under Informed Consent: Release and Waivers.
 8. It is to be understood that every team member who receives information on children and their families served shall be under the same obligations and subject to the same confidentiality penalties as the person disclosing or providing that information. The information shared is to be maintained in a manner that ensures the maximum protection of the individual client’s or family’s privacy and confidentiality rights in order to confirm that each team member understands that each team meeting shall
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begin with the team members reading the County System of Care Confidentiality Statement. See Attachment III. The team members shall signify their understanding by signing the attached role sheet.

MANDATED REPORTERS:

It is to be understood that nothing in this protocol is meant to inhibit in any way the responsibility that mandated reporters have to report child abuse, elder abuse, and/or dependent adult abuse. It is further understood that under certain circumstances mandated reporting also includes clients' threats of harming self or others when such information comes to them under circumstances other than the MDT environment.

APPENDIX C

Excerpts from

**MODEL FORM FOR CONSENT TO
EXCHANGE CONFIDENTIAL INFORMATION
AMONG THE MEMBERS OF
AN INTERAGENCY COLLABORATIVE**

**Youth Law Center
114 Sansome Street, Suite 950
San Francisco, CA 94104
(415) 543-3379**

EXCERPTS FROM
**MODEL FORM FOR CONSENT TO
EXCHANGE CONFIDENTIAL INFORMATION
AMONG THE MEMBERS OF
AN INTERAGENCY COLLABORATIVE**

RELEASE OF INFORMATION: NECESSARY ELEMENTS

The following elements should be included in any form used to obtain consent to exchange confidential client information among the members of a collaborative. Each of the elements of the release is followed by comments that explain its relevance and how it can be tailored to meet the specific needs of a particular collaborative. The letters of the elements are highlighted on the model consent form on page C-5.

(A) Name of the person who is the subject of the information

Comment: This element requires identification of the person to whom the confidential information pertains. When the information to be disclosed pertains to a child, the child's name should appear here even though he or she may not be legally competent to sign the release. There should be a different release for each individual, including children in the same family.

(B) Names of the persons/organizations in the collaborative authorized to share confidential client information

Comment: This element requires identification of the individuals or organizations who are permitted by this release to exchange client information. The client's privacy rights are best protected by specifying and limiting as much as possible the persons authorized to disclose confidential information. Potential for mistakes or mishandling of confidential information increases with the number of people who have access to, and control the exchange of, confidential information.

Thus, even where several organizations are affiliated with a collaborative, the staff person conducting the intake should tailor the release as closely as possible to the services requested or needed by the specific client. In other words, the release should not contain a boilerplate list of participating persons or organizations that has no connection to the services needed by the particular client. Rather, the release should identify only those persons or organizations who may require confidential information to serve the specific client.

(C) Type of information exchanged

Comment: The release should notify the client of the types or categories of information that may be exchanged. Again, the description should be as specific as possible. For example, "all client information" is too general because it does not give the client

adequate notice of the types of information that may be disclosed. “Mental health information” is better, but is still quite general. It is best to spell out what kinds of mental health information, such as history, diagnosis, hospitalizations, medication, mental health provider, etc.

The staff person explaining the consent process to the client should make clear that the client may consent to the release of certain information, and withhold consent to the release of other information. The written release should reflect these choices. For example, the form might provide a space for the client’s initials beside each type of information; the client can initial those categories of information that he or she agrees may be disclosed and cross off the categories of information he or she does not want disclosed. These options may not be immediately apparent to the client, and staff should carefully explain them. The manner in which the consent process is explained to clients is just as important as the contents of the written consent form. Staff must be well trained to understand the process of obtaining valid consent to release confidential information.

(D) Reasons for sharing the information

Comment: A release should indicate the circumstances that would trigger disclosure of confidential information. Confidential information should only be disclosed when necessary to provide comprehensive services to the client. Thus, the reason for sharing the information should be connected to the purpose of the collaborative. For example, if the purpose of the collaborative is to provide family preservation services, the release should indicate that confidential information will only be released among members of the collaborative when it is necessary to provide family preservation services to the client.

(E) A statement prohibiting redisclosure without consent

Comment: The consent form should contain a statement that any person or organization in the collaborative that receives confidential information pursuant to the release will keep the information confidential and will not redisclose the information outside the collaborative without a valid release to do so. A good practice is for the members of the collaborative to enter into an agreement (often called a Memorandum of Understanding or MOU) that prohibits the members from redisclosing confidential client information.

(F) A statement that the signer has the right to revoke the consent to release information

Comment: The person who is authorized to sign a consent to release information also has the authority to revoke that consent at any time. The best practice is to include a statement to that effect on the release, and to verbally explain the statement to the signer. Staff should also explain the process by which the client can revoke his or her consent. For example, the procedure could require the client to sign and date a written revocation form devised by the collaborative. Such a form should contain a simple statement, such as, “I hereby revoke my consent to the disclosure of any confidential information by the ABC Collaborative.”

(G) A statement that the release expires upon the occurrence of a specific event or on a specific date

Comment: Limiting the operation of the release to a specific period of time is an important means of protecting the privacy rights of the person who is the subject of the release. Specifying a time limit guards against general releases whose application is too broad, and contributes to the process of identifying a specific purpose for disclosing the information. If, upon the expiration of the original release, there is still a need to exchange confidential information, the appropriate staff person should prepare a new release tailored to the current needs of the client and obtain the necessary signature. If the release expires upon the occurrence of an event, such as the end of the school year, that event should be easily identified by the client and by the collaborative.

(H) A statement that the subject has a right to a copy of the release

Comment: The subject of the release (or authorized signer) should receive a copy of it. This practice helps to ensure that the signer knows and understands the contents of the release. The release should specifically state that the subject (or authorized signer) is entitled to a copy of the release. This practice helps to establish that the subject or signer was aware of his or her right to a copy.

(I) Date the release is signed

Comment: It is important to date the release so that it is clear when it becomes effective. When the release expires after a specific period of time (e.g., one year), the date the release is signed is also necessary to compute the date it ceases to be operative.

(J) Signature of person who is the subject of the information or his/her legal representative

Comment: The general rule is that the person who is the subject of the release must sign it. An important exception to this rule is when the subject of the release is legally incompetent to consent to release of confidential information. For the most part, minors are legally incapable of providing consent for services or for the release of confidential information. Thus, the child's parent, guardian, or responsible adult must sign the release.

There are some circumstances under which minors may consent to services. Emancipated minors are legally competent to provide consent without parental consent, knowledge, or liability. Minors are emancipated if they are married or on active duty in the armed forces, or if they have received a declaration of emancipation from the court. Before a minor can be emancipated by the court, he or she must meet the following requirements: 1) the minor is at least 14 years of age; 2) the minor willingly lives separate and apart from his or her parents or guardians with their consent or acquiescence; 3) the minor is managing his or her own financial affairs; and 4) the source of the minor's income is not derived from any illegal activity.

Minors who are at least 15 years old, living separate and apart from their parents, and managing their own financial affairs may consent to any medical and dental care. Finally, certain minors may consent to certain “sensitive” or “confidential” medical services without their parents’ consent or involvement.

The authority to provide consent for the release of confidential information derives from the authority to provide consent for services or care. Thus, if the minor has the legal authority to consent to the services, he or she also has the legal authority to provide consent for the release or disclosure of information related to those services. In fact, parental consent is insufficient in these circumstances. Conversely, if parental consent is necessary to provide the services, parental consent is also necessary to permit disclosure of information related to those services.

For children who are wards or dependents of the juvenile court, parents maintain authority over records concerning their children unless the court specifically removes that authority and delegates the responsibility to another person — such as a social worker, foster parent, facility administrator, etc. Thus, staff members should obtain the necessary consent for services or for release of information from parents unless the parents are unavailable or the court has identified another responsible party. The court itself may also provide the necessary consent for services or release of information.

**MODEL FORM FOR CONSENT TO EXCHANGE CONFIDENTIAL
INFORMATION AMONG THE MEMBERS OF
AN INTERAGENCY COLLABORATIVE**

I, _____, authorize
(Name of authorized signer) (A)
the following members of the (name of collaborative)

(Names of the persons/organizations authorized to exchange confidential information) (B)
to exchange the following information about [me] [my child or ward, _____]:

(Nature of information, as limited as possible) (C)

The purpose for the exchange of the above information is:

(Purpose of disclosure, as specific as possible) (D)

I understand that (the members of the collaborative) will not redisclose the
information outside (name of the collaborative) without a valid release to do so. (E) I also
understand that I can revoke this consent at any time except as to information that has already
been exchanged in reliance my consent. (F) In any event, this consent expires automatically as
follows:

(Specification of the date, event, or condition upon which this consent expires)
_____ . (G)

I understand that I am entitled to receive, and have received, a copy of this signed
consent form. (H)

Dated: _____ (I) _____
Signature of subject of release (J)

Signature of parent, guardian or authorized
Representative when required