



AOC Briefing

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SHARING HEALTH CARE INFORMATION FOR CHILDREN IN FOSTER CARE



ADMINISTRATIVE OFFICE
OF THE COURTS

CENTER FOR FAMILIES, CHILDREN
& THE COURTS

Introduction

Children in foster care are frequently at risk of having their health care interrupted or delayed, and having health care decisions made for them based on incomplete information. Removing unnecessary barriers to sharing of health care information for the coordination of health care services for foster children is a priority of California's Child Welfare Council and Blue Ribbon Commission on Children in Foster Care. To assist in the discussion about removing barriers to information sharing, the Administrative Office of the Courts has prepared this overview of laws related to sharing health information. This overview is not intended to be an exhaustive legal analysis of all legal issues related to sharing health information concerning foster children. It is intended to provide the basis for further discussions about identifying and removing legal barriers that prevent child welfare services and the juvenile courts from obtaining all the information they need to make informed decisions about medical care for foster children.

How can sharing medical information help improve the lives of foster children?

- Children continue to receive any medical care that they need when they are removed from their homes.
- Children continue to take any necessary medication.
- Health care providers have access to a child's health history when determining appropriate treatment.
- Foster parents and other caregivers understand all the health needs of the children in their care.
- The child welfare agencies and juvenile courts can monitor the health and well-being outcomes of children under their jurisdiction.

State and federal law require that child welfare agencies maintain medical information in each child's case plan.

Sharing health information about children in foster care helps ensure that they get appropriate medical care. When a child is removed from his or her home due to abuse or neglect, it is critical that social workers, caregivers, and judges have access to the child's medical records.

- Title IV-E of the Social Security Act requires states to develop case plans for children in foster care and that the case plans include the most recent information available regarding the child's health providers, the child's immunization records, the child's medications and any other relevant health information as determined by the child welfare agency. (42 U.S.C. §671(a)(16), 42 U.S.C. §675(1)(C); Welfare and Institutions Code § 16010(a).)

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- State law requires the child welfare agency to include the case plan with the court report, which must be filed with the court at the initial hearing and all review hearings. (Welfare and Institutions Code §16501.1(f)(14).)
- Federal law also requires states to exchange information electronically through the state's automated child welfare and Medicaid systems to the extent it is feasible (45 C.F.R. § 1355.53(b)(2)) and encourages automated data exchange between child welfare and the courts. (45 C.F.R. §1355.53(d).)

Health care providers may share health information with the child welfare agency for the purpose of coordinating health care services and medical treatment for foster children without violating federal and state confidentiality laws.

Federal Law

The Health Insurance Portability and Accountability Act (HIPAA) provides for the confidentiality and privacy of individual medical records.

- Entities covered by HIPAA ("covered entities") include public and private health care providers. Covered entities may disclose most personal health information if required by law. (45 C.F.R. § 164.512(a).)
- Covered entities must disclose health care information pursuant to a signed authorization. (45 C.F.R. § 164.502(a)(1)(iv).)
- Covered entities may disclose health care information to individuals, parents and other representatives, including persons who are acting in loco parentis (persons having the authority to act on behalf of the child in making health care decisions) without need of a signed authorization. HIPAA defers to state law to define who is an appropriate representative for a minor. (45 C.F.R. § 164.502(g)(3).)
- Disclosures concerning health care are permitted for court proceedings when there is a subpoena or court order (45 C.F.R. § 164.512(e).)

California Law

The Confidentiality of Medical Information Act (CMIA) provides for the confidentiality and privacy of individual medical records in California.

- A parent or a guardian of a minor generally has access to information on the minor patient's condition and care. (Civil Code § 56.10(b)(7); Health and Safety Code §123110.)

Exception: Representatives are not entitled to inspect or obtain copies of a minor patient's medical records if the minor has a right to consent to the medical care or where the health care provider determines that access to the records would have a detrimental effect on the provider's professional relationship with the minor or the minor's physical safety or psychological well-being. (Health and Safety Code § 123115.)

- A health care provider must disclose medical information pursuant to a signed authorization. (Civil Code § 56.10(a).)
- A health care provider may disclose medical information to a county social worker or probation officer or any other person who is legally authorized to have custody or care of a minor for the purpose of coordinating health care services and medical treatment without need of a signed authorization. (Civil Code §§ 56.10(c)(20);56.103.)

Exception: A health care provider may not disclose to a social worker or probation officer either psychotherapy notes or information related to treatment that the minor consented to or could have consented to on his or her own behalf under this exception. (Civil Code § 56.103(e),(h)(2)).)

- A minor's medical information that is disclosed to a social worker or probation officer may not be further disclosed unless the disclosure is for the purpose of coordinating health care services and the disclosure is authorized by law. (Civil Code §56.103(d) and Civil Code § 56.13.)
- A health care provider must disclose health information if the disclosure is required by a court order or a subpoena. (Civil Code § 10(b)(1)(3).)
- Counsel for a dependent child has a right to access the child's medical records. (Welfare and Institutions Code § 317(f).)

Child welfare may share certain health information with the court, but disclosure is limited by the child's doctor-patient and therapist-patient privilege.

- California law requires the child welfare agency to maintain a health summary for foster children and to include this summary in court reports. (Welfare and Institutions Code §§ 16010(a); 16501.1(f)(14).)
- However, summary health information provided in court reports cannot include privileged communications unless the child or child's attorney waives the privilege. Communications between a patient and a doctor or therapist in a confidential setting are privileged and cannot be disclosed in court or in court reports unless the patient waives the privilege. (Evidence Code §§ 990 et seq. and 1010 et seq.) In dependency cases, privilege may be waived by the child if he or she is 12 years old or older, or the child's attorney if the child is under 12. Neither the Court, a health care provider or a parent may waive privilege for a child. (Welfare and Institutions Code § 317(f).)

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- Thus, a social worker may have access to information for other purposes that the social worker cannot disclose in court reports because the information constitutes a privileged communication between the child and a doctor or therapist. The interplay between evidentiary privilege and the Welfare and Institutions Code §16501.1(f)(14) mandate that summary health information be provided in court reports is not entirely clear.

Federal law encourages automated data exchanges of health care information between the Medicaid agency, the child welfare agency and the courts.

- Federal law encourages states to develop child welfare automated systems that have the capability for automated data exchanges between the child welfare agency, the Medicaid agency, and the courts among others. (45 C.F.R. § 1355.53.)
- Child welfare is authorized to disclose information to the Medicaid (Medi-Cal) agency for purposes directly related to the administration of either program. (42 U.S.C § 671 (a)(8)(A).)
- Medi-Cal is authorized to disclose information to child welfare for purposes directly related to the administration of the Medi-Cal program. “Directly related” includes determining the amount of medical assistance and providing services for recipients. (42 U.S.C. § 1396 (a)(7); 42 C.F.R. § 431.302.)

The recent adoption of the federal Fostering Connections Act gives California the opportunity to set forth a comprehensive plan for the sharing of foster children’s medical information to ensure that foster children receive continuous health care services.

Recent changes to federal law require the states to develop a plan for the ongoing oversight and coordination of health care services for any child in foster care. The plan must include provisions for how medical information for children in foster care will be updated and appropriately shared between interested agencies and individuals. States can develop and implement an electronic health record and a medical home for every child. (42 U.S.C. 622 (b) (15) (A) (iii), (iv).)

Conclusion

While the internal policies and procedures of both governmental agencies and health care providers frequently prevent the exchange of health information about foster children at the state and local level, the legal framework to allow some exchange currently exists. While stakeholders need a clear understanding of the protections of health information required by law, certain health care information for foster children can be shared by the health care providers with the child

welfare agency. The child welfare agency is required to include a summary of health information in reports filed with the juvenile court.

Legislation, regulations or rules of court may be needed to clarify what health information may be provided to the court without a waiver of the doctor-patient or psychotherapist-patient privilege. Legislation or regulations may also be needed to clarify the extent to which Medi-Cal information may be provided to child welfare services.

Recent federal law requires California to develop a comprehensive plan for the sharing of foster children's medical information. The completion of this plan requires that any unnecessary legal impediments to appropriate information sharing be identified and removed through legislation, regulations or rule of court as appropriate.

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