Process and Safeguards for Maintaining Privacy and Confidentiality

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DHCS CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES

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Danielle Raghib and David Eric Lopez have certified that they have no relevant relationships with any commercial or nonprofit organizations that represent a conflict of interest.

Mobile Crisis Services

- *Mobile crisis services provide rapid response, individual assessment and community-based stabilization to Medi-Cal members who are experiencing a behavioral health crisis. Mobile crisis services are designed to provide relief to members experiencing a behavioral health crisis, including through de-escalation and stabilization techniques; reduce the immediate risk of danger and subsequent harm; and avoid unnecessary emergency department care, psychiatric inpatient hospitalizations and law enforcement involvement.*

Behavioral Health Information Notice 23-025, p. 3

A New Direction for Mobile Crisis Services

- Change mobile crisis services so that the response is more resolution-focused and works to provide relief to people in crisis in the community.
- Support people in crisis where they are, while using the least restrictive means necessary.

A New Direction for Mobile Crisis Services

» Mobile crisis services should be:

- Person-centered
- Trauma-informed
- Equity-driven
- Brief intervention: de-escalation and resolution focused
- Working from a lens of least restrictive interventions
- Culturally responsive, linguistically appropriate, and accessible

Welcome and Introductions

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Today's Presenters

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Learning Objectives

By attending this training, participants will:

1. Understand Behavioral Health Information Notice (BHIN) 23-025 requirements for maintaining privacy and confidentiality.
2. Review Health Insurance Portability and Accountability Act (HIPAA) and 42 C.F.R. Part 2 as they relate to mobile crisis teams as health care providers and sharing protected information in crisis situations.
3. Increase their knowledge of best practices and legal standards for exchanging protected health information when coordinating with other delivery systems of care.

BHIN 23-025: Maintaining Privacy and Confidentiality

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General Guidance

General Guidance The State of California encourages multi-disciplinary coordination of care for people receiving treatment and services in California. There is a growing consensus in the healthcare community that such integrated whole person care improves treatment outcomes, reduces inefficient use of healthcare resources, and increases patient satisfaction and safety.

At the same time, the State acknowledges the importance of protecting the privacy of patients and the confidentiality of healthcare information. Many patients have needlessly experienced the pain of ostracization or discrimination due to the inappropriate disclosure of health information regarding their mental health or substance use disorder (SUD) treatments. Protecting patients from this type of violation of their privacy rights is the driving force behind the special regulatory protections for mental health and SUD patients' healthcare records and information.

State Health Information Guidance, p. 17

BHIN 23-025

- **Privacy and Confidentiality**
  - Mobile crisis teams shall maintain the privacy and confidentiality of their patient's information in accordance with federal and state law. Mobile crisis teams typically will be health care providers subject to the privacy and security rules under the Health Insurance Portability and Accountability Act (HIPAA). While mobile crisis teams and Medi-Cal behavioral health delivery systems will often be able to exchange protected health information in compliance with HIPAA, Medi-Cal behavioral health delivery systems shall be aware of HIPAA requirements that may limit mobile crisis teams' ability to share such information, such as HIPAA's minimum necessary requirement.

BHIN 23-025, p. 22

BHIN 23-025: Privacy and Confidentiality

- In addition, there may be circumstances where mobile crisis teams are subject to the federal substance use disorder confidentiality regulation, 42 C.F.R. Part 2. Medi-Cal behavioral health delivery systems shall inquire whether any of their mobile crisis teams are subject to 42 C.F.R. Part 2 and, if so, ensure that workflows are in place to ask members for their consent when appropriate. If the member is being served through a CalAIM initiative, some additional data sharing is permissible that might otherwise have been restricted under California law. For more information, Medi-Cal behavioral health delivery systems should consult the CalAIM Data Sharing Authorization Guidance.

BHIN 23-025, p. 22

State Health Information Guidance (SHIG)

- The State Health Information Guidance (SHIG) is a publication released in April of 2023 by The California Health and Human Services Agency (CalHHS).
- The SHIG combines general guidance and field-based scenarios to clarify federal and state behavioral health laws related to sharing mental health information and substance use disorder (SUD) patient-identifying information.
- The SHIG offers authoritative guidance to provide legal clarification for sharing patient information while protecting patient privacy. Removing obstacles may result in increased coordination of care to help patients achieve better health outcomes, but coordination of care requires patient information to be shared in an appropriate, secure, and timely manner between different types of health providers.

State Health Information Guidance p.13

Principles for Sharing Behavioral Health Information

- Patient Access Principle – A patient generally has the right to inspect, review, and obtain copies of his or her behavioral health information, and a provider must enable such patient access.
- Patient Right to Be Informed Principle – A patient generally has the right to be informed of a provider's practices regarding uses and disclosures of his or her healthcare information.

Principles for Sharing Behavioral Health Information

- The SHIG provides the following principles for sharing behavioral health information. The following general principles are considered foundational by the State of California for sharing behavioral health information and records.
- Coordination of Care Principle - behavioral health information should be shared by providers to the extent allowed by federal and state laws to address patient care needs involving medical, behavioral, and socioeconomic issues.
- Information Blocking Principle – Intentionally not sharing behavioral health information that can be legally and ethically shared to benefit the patient is strongly discouraged.
- Information blocking is prohibited for health care providers, health IT developers of certified health IT, health information exchanges, and health information networks, as defined in 45 C.F.R. part 171.102 under the Information Blocking Rule of the 21st Century Cures Act. (45 C.F.R. § 171.100 et seq.)

State Health Information Guidance, pp.17-18

Principles for Sharing Behavioral Health Information cont.

- Information blocking is prohibited for health care providers, health IT developers of certified health IT, health information exchanges, and health information networks, as defined in 45 C.F.R. part 171.102 under the Information Blocking Rule of the 21st Century Cures Act. (45 C.F.R. § 171.100 et seq.)
- The U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG) published a final rule to establish civil money penalties authorized by the Cures Act that applies to health IT developers of certified health IT, entities offering certified health IT, health information exchanges, and health information networks. If OIG determines that one of these entities has committed information blocking, they may be subject to up to a $1 million penalty per violation.

Information Blocking HHS-OIG

Principles for Sharing Behavioral Health Information

- Patient Right to Authorize Disclosure of Healthcare Information Principle – A patient has the right to authorize disclosure of his or her behavioral health information.

Generally Applicable Guidance

- Minimum necessary when information is requested, used, or disclosed
- Documentation Requirements for Authorized Disclosures
- Re-Disclosure of 42 C.F.R. Part 2, CMIA, and LPS Patient Information
- Psychotherapy Notes
- De-identified Information and Limited Data Set

Health Insurance Portability and Accountability Act (HIPAA)

HIPAA

The *Standards for Privacy of Individually Identifiable Health Information* ("Privacy Rule") establishes, for the first time, a set of national standards for the protection of certain health information. The U.S. Department of Health and Human Services ("HHS") issued the Privacy Rule to implement the requirement of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The Privacy Rule standards address the use and disclosure of individuals' health information—called "protected health information" by organizations subject to the Privacy Rule — called "covered entities," as well as standards for individuals' privacy rights to understand and control how their health information is used. Within HHS, the Office for Civil Rights ("OCR") has responsibility for implementing and enforcing the Privacy Rule with respect to voluntary compliance activities and civil money penalties.

https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html

What Information is Protected by HIPAA

- A major goal of the Privacy Rule is to assure that individuals' health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public's health and well-being. The Rule strikes a balance that permits important uses of information, while protecting the privacy of people who seek care and healing. Given that the health care marketplace is diverse, the Rule is designed to be flexible and comprehensive to cover the variety of uses and disclosures that need to be addressed.
- The Privacy Rule protects all "individually identifiable health information" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information "protected health information (PHI)."

https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html

What Information is Protected by HIPAA

- Personally identifiable health information, or PHI, is information including, demographic data, that relates to:
  - the individual's past, present, or future physical or mental health condition,
  - the provision of health care to the individual, or
  - the past, present, or future payment for the provision of health care to the individual,
  - *and* that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number).

The Privacy Rule excludes from protected health information employment records that a covered entity maintains in its capacity as an employer and education and certain other records subject to, or defined in, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g.

https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html

Types of Data Protected by HIPPA

- Written documentation and all paper records.
- Spoken and verbal information, including voicemail messages.
- Electronic databases and any electronic information, including research information containing PHI, stored on a computer, smart phone, memory card, USB drive, or other electronic device.
- Photographic images.
- Audio and video recordings.

https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html

Privacy

A Notice of Health Information Privacy practices may be given to and be readily available to all members who receive mobile crisis services.

A Notice of Health Information Privacy:

- Explains how the covered entity will use/disclose patient's PHI.
- Explains a patient's rights and where to file a complaint.
- Is offered to a patient at the time of the first visit (patient should sign and date at time of first visit).
- Is posted on facility's web page and in patient reception area.

https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html

State of California Statutes; Confidentiality of Medical Information Act (CMIA) – Cal. Civ. Code § 56 et seq.11

- This law protects the privacy of medical information by limiting disclosures by health providers, health plans, and contractors.
- Disclosure of limited health information including location, general condition, or death may be released to family members, other relatives, domestic partners, close personal friends, or other persons identified by the patient.

https://www.cdii.ca.gov/wp-content/uploads/2023/04/State-Health-Information-Guidance-1.2-2023.pdf

HIPAA and Mobile Crisis Services

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California Consumer Protection Act (CCPA) – Cal. Civ. Code § 1798.100 et seq.

- This law protects the privacy of consumers' personal information collected by for-profit businesses that meet certain threshold requirements for annual revenue or number of consumers of whom they receive, buy, sell, or share personal information. Health providers and information covered by either HIPAA or the CMIA is exempted from the CCPA requirements. (Cal. Civ. Code § 1798.145(c)(1)(A-B).) All scenarios in this SHIG assume that the CCPA does not apply.

https://www.cdii.ca.gov/wp-content/uploads/2023/04/State-Health-Information-Guidance-1.2-2023.pdf

Sharing/Releasing Information

When a person in crisis is not able to remain safe in the community and/or care for themselves and requires further treatment through a warm handoff (e.g., crisis stabilization unit, sobering center, crisis respite, psychiatric health facility [PHF], psychiatric inpatient hospital, general acute care hospital, or crisis residential treatment program), PHI and confidential information will need to be shared with the receiving entity. In these cases, information sharing:

- Must follow all legal and ethical standards for confidentiality and the limits to confidentiality.
- Must abide by all legal (both state and federal) standards for sharing PHI.

When coordinating care for referrals for ongoing services after the person is no longer in crisis, the person in crisis or parent/legal guardian must provide consent for any release or sharing of information. The mobile crisis team:

- Must follow all legal and ethical standards for confidentiality and the limits to confidentiality.
- Must abide by all legal (both state and federal) standards for sharing PHI.

https://www.apa.org/topics/psychotherapy/confidentiality
https://pubmed.ncbi.nlm.nih.gov/6515696/

Privacy Safeguards for Mobile Crisis Teams

- Avoid conversations involving PHI in public or common areas such as hallways or elevators.
- Keep documents containing PHI in locked cabinets, locked clipboards, or locked rooms when not in use.
- During work hours, place written materials in secure areas that are not in view or easily accessed by unauthorized persons.
- Do not leave materials containing PHI on desks or counters, in conference rooms, on fax machines/printers, or in public areas.
- Do not remove PHI in any form from the designated work site unless authorized to do so by management.
- Never take unauthorized photographs during a mobile crisis services encounter, including audio and video.
- Maintain security of all mobile devices/laptops during and after an encounter.

https://www.apa.org/topics/psychotherapy/confidentiality
https://pubmed.ncbi.nlm.nih.gov/6515696/

CalAIM Data Sharing Authorization

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CalAIM Background

In 2022, the California Department of Health Care Services (DHCS) launched California Advancing and Innovating Medi-Cal (CalAIM) to transform and strengthen Medi-Cal, offering Californians a more equitable, coordinated, and person-centered system to help people maximize their health and life trajectory.

CalAIM integrates Medi-Cal members care coordination and case management across physical health, behavioral health, and social service providers. This model focuses on the need for integrated care for members at various stages of risk and needs, while also providing care to members with the highest risk through Enhanced Care Management (ECM) and Community Supports.

CalAIM builds upon the county-based Whole Person Care (WPC) pilots and plan-based Health Home Program (HHP) that use whole-person care approaches to address underlying social drivers of health (SDOH). CalAIM envisions enhanced coordination, integration, and information exchange among managed care plans (MCPs) and among physical, behavioral, community-based organizations, social service providers, and county agencies.

https://www.dhcs.ca.gov/Documents/MCQMD/CalAIM-Data-Sharing-Authorization-Guidance.pdf

CalAIM Data Sharing Guidance

CalAIM requires the exchange of information about Medi-Cal members, including an array of administrative, clinical, social, and human service information across sectors. This exchange must occur in compliance with federal and state privacy laws, regulations, and other data sharing rules.

The CalAIM Data Sharing Authorization Guidance document (published March 2022) is intended to provide guidance that supports data sharing between MCPs, health care providers, community-based social and human service providers, local health jurisdictions, and county and other public agencies that provide services and manage care under CalAIM (collectively referred to as "CalAIM Participants").

https://www.dhcs.ca.gov/Documents/MCQMD/CalAIM-Data-Sharing-Authorization-Guidance.pdf

Confidentiality

Exceptions to Confidentiality for Behavioral Health Providers

- The person in crisis is a danger to self (e.g., suicidal, making threats to harm self).
- The person in crisis is threatening to harm another specific person (e.g., assault, kill).
  - This could potentially activate a duty to warn the intended victim/s.
- The person in crisis discloses any type of child abuse or neglect.
  - This may also be disclosed by collaterals on site.
- The person in crisis discloses any type of elder or dependent abuse.
  - This may also be disclosed by collaterals on site.

https://www.apa.org/pubs/books/supplemental/Essential-Ethics-Psychologists/exceptions.pdf

Code of Federal Regulations 42 (C.F.R.) Part 2

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42 C.F.R Part 2

- In addition to HIPAA, there are special privacy protections afforded to alcohol and drug abuse patient records by (42 C.F.R.) part 2.
- The privacy provisions in 42 C.F.R. Part 2 were motivated by the understanding that stigma and fear of prosecution might dissuade persons with substance use disorders from seeking treatment.

42 C.F.R. Part 2

42 C.F.R. Part 2

- 42 C.F.R. Part 2 applies to any individual or entity that is federally assisted and holds itself out as providing alcohol or substance use diagnosis, treatment, or referral for treatment.
- The information protected by 42 C.F.R. Part 2 is any information that identifies an individual directly or indirectly as having a current or past drug or alcohol problem or as a participant in a covered program.

42 C.F.R. Part 2

Who is subject to 42 C.F.R Part 2

In order to be subject to 42 C.F.R. Part 2, an entity or provider must be both federally assisted and meet the definition of a 'program.' The provider is a 'program' if it promotes itself as offering SUD services and provides or makes referrals for SUD services.

For-profit programs and private practitioners who only accept private insurance or self-pay patients are not subject to 42 C.F.R. Part 2 regulations except when licensed by the State of California as described in the next paragraph. In California under Section 10568(c) of Title 9 of the California Code of Regulations, all information and records obtained from or regarding residents in Residential or Drug Abuse Recovery and Treatment facilities licensed by the DHCS shall be confidential and maintained in compliance with 42 C.F.R. Part 2.

Federally Qualified Health Centers (FQHC) licensed by the DHCS as an Alcoholism or Drug Abuse Recovery or Treatment Facility are also subject to 42 C.F.R. Part 2.

State Health Information Guidance p 27

Why 42 C.F.R. Part 2 is Important

- Confidentiality is a cornerstone of any treatment program and relationship. For individuals who are receiving treatment for substance use disorder, strict confidentiality protections mean that information can be shared about past and current drug use without worrying about prosecution or other consequences.
- Reducing the stigma and criminalization of those who are struggling with substance use means patients need the right to access treatment without worry that their records will be used negatively and deprive them of their rights or freedoms.

42 C.F.R. Part 2

Records Protected by 42 C.F.R. Part 2

- Upon request, patients who have consented (using a general designation) to disclose their SUD patient-identifying health information must be provided a list of entities to whom their information has been disclosed. Under 42 C.F.R. Part 2 regulations, a patient may use the designation of an individual(s) and/or entity(ies) (e.g., “my past and current treating physicians”).
- Requests must be in writing and limited to disclosures within the past two years. Each document disclosure must include:
  - Name(s) of the entity(ies)
  - Date of the disclosure
  - Brief description of the SUD patient-identifying information disclosed [42 C.F.R. §§ 2.13(d), 2.31(a)(4)(ii)(B).]

https://www.cdii.ca.gov/wp-content/uploads/2023/04/State-Health-Information-Guidance-1.2-2023.pdf

Category/ Purpose	Substance Use Disorder Patient-Identifying Information			Mental Health Patient-Identifying Information		
	Regulated by 42 C.F.R. Part 2		Regulated by Cal. Health & Safety Code *(if licensed by Cal. DHCS)*	Regulated by Lanterman-Petris-Short (LPS) Act		Regulated by Cal. Civil Code (CMIA)
Treatment / Coordination of Care (e.g., for medical emergency)	Substance use disorder information may be disclosed without a patient authorization for the purpose of treating a medical emergency. *42 C.F.R. § 2.51.*	**AND**	To qualified medical persons not employed by the treatment program to the extent necessary to meet a bona fide medical emergency. *Cal. Health & Safety Code § 11845.5(c)(2).*	Mental health information may be shared for diagnosis and treatment. *Cal. Welf. & Inst. Code § 5328(a)(1).*	**OR**	Behavioral health information may be used or disclosed, without a patient authorization, to facilitate treatment. *Cal. Civ. Code § 56.10(c)(1).*
	HIPAA: Mental/Behavioral health information may be used or disclosed, without a patient authorization, to facilitate treatment. *45 C.F.R. § 164.506(c)(4).* **Preemption consideration:** HIPAA does not preempt the regulations listed above – but still applies.			**HIPAA:** Mental/Behavioral health information may be used or disclosed, without a patient authorization, to facilitate treatment. *45 C.F.R. § 164.506(c)(4).* **Preemption consideration:** HIPAA does not preempt the regulations listed above – but still applies.		

State Health Information Guidance 1.2 p, 38

Category/ Purpose	Substance Use Disorder Patient-Identifying Information			Mental Health Patient-Identifying Information		
	Regulated by 42 C.F.R. Part 2		Regulated by Cal. Health & Safety Code *(if licensed by Cal. DHCS)*	Regulated by Lanterman-Petris-Short (LPS) Act		Regulated by Cal. Civil Code (CMIA)
Treatment / Coordination of Care (e.g., treatment is not for medical emergency)	Substance use disorder information can be disclosed to qualified personnel when needed for treatment, within a program. Communications between a program and an entity that has direct administrative control of the program for treatment may occur without authorization. *42 C.F.R. § 2.12(c)(3) and (d)(2).*	**AND**	In communications between qualified professional persons employed by the treatment or prevention program in the provision of service. *Cal. Health & Safety Code § 11845.5(c)(1).*	Qualified professional persons having responsibility for the patient's care whether internal or external to the facility may share the patient's mental health information to provide treatment or referral for treatment. *Cal. Welf. & Inst. Code § 5328(a)(1).*	**OR**	Mental/Behavioral health information may be used or disclosed, without a patient authorization, to facilitate treatment. *Cal. Civ. Code § 56.10.*
	HIPAA: Mental/Behavioral health information may be used or disclosed, without a patient authorization, to facilitate treatment. *45 C.F.R. § 164.506(c)(4).* **Preemption consideration:** HIPAA does not preempt the regulations listed above – but still applies.			**HIPAA:** Mental/Behavioral health information may be used or disclosed, without a patient authorization, to facilitate treatment. *45 C.F.R. § 164.506(c)(4).* **Preemption consideration:** HIPAA does not preempt the regulations listed above – but still applies.		

State Health Information Guidance 1.2 p, 39

Re-Disclosure of 42 C.F.R Part 2 Regulated Patient Information

Behavioral health information regulated by 42 C.F.R. Part 2 is specially protected and, once received, may only be re-disclosed under specific conditions. SUD patient-identifying information that has been disclosed in response to a patient authorization must have an additional patient authorization to be re-disclosed [42 C.F.R. §§ 2.31, 2.32.]. One of the following written statements must accompany each disclosure of SUD patient identifying information made with patient authorization:

1. "This record which has been disclosed to you is protected by federal confidentiality rules (42 C.F.R. part 2). The federal rules prohibit you from making any further disclosure of this record unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed in this record or, is otherwise permitted by 42 C.F.R. part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see § 2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at §§ 2.12(c)(5) and 2.65" **OR**
2. "42 C.F.R. part 2 prohibits unauthorized disclosure of these records."

https://www.cdii.ca.gov/wp-content/uploads/2023/04/State-Health-Information-Guidance-1.2-2023.pdf

Coordinating with Other Delivery Systems

Coordinating with Schools

Sharing information with delivery systems like schools, either during or after a crisis, can be crucial. Best practice is to have consent to do so from the appropriate person/s; however, in crisis cases it is not necessary to have data sharing consent in place across all providers.

When responding to schools for a mobile crisis services encounter, mobile crisis teams can coordinate with the school team if they are the referring party.

Mobile crisis teams must follow all legal and ethical standards for student confidentiality and understand the limits to confidentiality in crisis situations.

https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html

The Family Education Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 C.F.R. Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

Generally, schools must have written permission from the parent or eligible student to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 C.F.R. § 99.31):

- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities within a juvenile justice system, pursuant to specific state law.

https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html

Coordination with Child and Adult Protective Services

- In some cases, you may have to coordinate with child or adult protective services to fulfill your obligation as a mandated reporter in California.
- Information obtained during the mobile crisis encounter that obligates you to file a mandated report may be shared with the receiving entity as it pertains and is relevant to the report.
  - Must follow all legal and ethical standards for confidentiality and the limits to confidentiality.
  - Must abide by all legal (both state and federal) standards for sharing PHI.

https://www.cde.ca.gov/ls/ss/ap/childabusereportingguide.asp
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC&sectionNum=15630

Coordination with Child Protective Services

Child abuse or neglect mandated reporting:
"All persons who are mandated reporters are required, by law, to report all known or suspected cases of child abuse or neglect. It is not the job of the mandated reporter to determine whether the allegations are valid. If child abuse or neglect is reasonably suspected or if a pupil shares information with a mandated reporter leading him/her to believe abuse or neglect has taken place, the report must be made. No supervisor or administrator can impede or inhibit a report or subject the reporting person to any sanction."

https://www.cde.ca.gov/ls/ss/ap/childabusereportingguide.asp
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC&sectionNum=15630

Coordination with Adult Protective Services

Elderly or dependent adult abuse or neglect reporting:

"A mandated reporter who, in their professional capacity, or within the scope of their employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that they have experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone or through a confidential internet reporting tool, as authorized by Section 15658, immediately or as soon as practicably possible."

https://www.cde.ca.gov/ls/ss/ap/childabusereportingguide.asp
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC&sectionNum=15630

CALIFORNIA MINOR CONSENT LAWS – MENTAL HEALTH SERVICES:
Minor Consent Services and Parents Access Rules*

SERVICE/TREATMENT	CONSENT LAW	INFORMING/CONFIDENTIALITY OBLIGATIONS
ASSESSMENT* *Assessment means the evaluation necessary for an attending professional to assess whether a minor meets criteria of the minor consent statutes, cited in next column.	Two statutes give minors the right to consent to mental health treatment. If a minor meets the criteria under either statute, the minor may consent to treatment. If the minor meets the criteria under both, the provider may decide which statute to apply. There are differences between them. See endnote ** for more on these differences: <u>Family Code § 6924</u> "A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis or to residential shelter services, if both of the following requirements are satisfied: (1) The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services. AND (2) The minor (A) would present a danger of serious physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or (B) is the alleged victim of incest or child abuse." Fam. Code § 6924.	***Parent Access/Confidentiality Obligation*** If the minor consents or could have consented to care, the provider only may share the minor's health information with parents or guardian with the signed authorization of the minor. Health & Saf. Code §§ 123110(a), 123115(a); Civ. Code §§ 56.10(b)(7), 56.11(c); 45 C.F.R §§ 164.502(g)(3); 164.508(a). ***Discretion to Inform/Involve Parents?*** The health care provider is required to involve a parent or guardian in the minor's outpatient treatment unless the health care provider decides that such involvement is inappropriate. This decision and any attempts to contact parents must be documented in the minor's record. When services are being provided under Health and Safety Code § 124260, providers must consult with the minor before making the determination concerning parental involvement. Involving parents in treatment will necessitate sharing certain confidential information; however, having them participate does not mean parents have a right to access confidential records. Providers should attempt to honor the minor's right to confidentiality to the extent possible while still involving parents in treatment. Fam. Code § 6924; 45 C.F.R. § 164.502(g)(3); Health & Saf. Code § 124260(c). This description of applicable law presumes that these are not "Lanterman Petris Short" (LPS) services. See end note *** for more on LPS.
OUTPATIENT MENTAL HEALTH TREATMENT OR COUNSELING SERVICES* * This does NOT include inpatient psychiatric care, convulsive therapy, psychosurgery or psychotropic medications. *Treatment and counseling means provision of treatment and counseling on an outpatient basis by • A "professional person" as defined in Health and Safety Code 124260(a), for services provided under that statute. Please see the statute for more information • Certain agencies or a "professional person" as defined in Family Code 6924(a)(1), for services under that statute. Please see the statute for more information.	<u>Health & Safety Code § 124260</u> "[A] minor who is 12 years of age or older may consent to [outpatient] mental health treatment or counseling services if, in the opinion of the attending professional person, the minor is mature enough to participate intelligently in the mental health treatment or counseling services." Health & Saf. Code § 124260. If services are being provided by licensed interns or trainees, there may be obligations to consult with a supervisor regarding provision of minor consent care. See Health & Saf. Code § 124260	

http://teenhealthlaw.org/wp-content/uploads/2019/09/CaMCConfMentalHealthChart9-19.pdf

Case Example

- Scenario Guidance- Law Enforcement Official (LEO) Requesting Information from a Substance Use Disorder Treatment Facility.

- Employees of a publicly-identified SUD treatment facility or component of a healthcare facility regulated by 42 C.F.R. Part 2 and HSC § 11845.5 are limited by law regarding the SUD patient identifying information they can provide to a LEO (such as police officer, sheriff's deputy, district attorney, or detective). Without a valid authorization or a court order to release SUD patient-identifying information, generally no information may be released. [42 C.F.R. § 2.13(c)(1) – (c)(2); Cal. Health & Safety Code § 11845.5(a) – (b).] Employees of a non-publicly identified SUD treatment facility or component of a healthcare facility, not licensed by California Department of Health Care Services (DHCS) but regulated by 42 C.F.R. Part 2 may acknowledge the presence of an individual. However, 42 C.F.R. Part 2 regulations do not require entities to acknowledge that an individual is a patient. No other SUD patient-identifying information may be disclosed without a valid authorization or court order. [42 C.F.R. § 2.13(c)(1) – (c)(2); Cal. Civ. Code § 56.10.] In any case, with a valid patient or patient's representative authorization, the SUD treatment facility may disclose the patient-identifying health information.

State Health Information Guidance p.111

Case Example

- Scenario Guidance – Public Safety
- A patient's psychotherapist has a responsibility per all mental health information privacy laws to warn potential victims. If the psychotherapist believes a patient presents a serious danger of violence, he or she may release limited mental health information to potential victims, law enforcement officials, or others when necessary if the psychotherapist determines the disclosure is needed to protect the health and safety of a person(s). [45 C.F.R. § 164.512(j); Cal. Civ. Code § 56.10(c)(19); Cal. Welf. & Inst. Code § 5328(a)(18).]
- A SUD treatment provider only regulated by 42 C.F.R. Part 2 may provide information that does not identify the patient as a person with a SUD or receiving treatment for a SUD in order to warn potential victims, law enforcement, or others. [42 § C.F.R. 2.12(a); 45 C.F.R. § 164.512(j); Cal. Civ. Code § 56.10(c)(19).]
- In any case, with a valid patient or patient's representative authorization, the mental health or SUD treatment facility may disclose the patient-identifying information.

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Case Example

Scenario Guidance-Patient Being Released from Involuntary Hospitalization

- Employees of a mental health facility regulated by LPS are limited by law in the information they can provide to a LEO. Without a patient authorization or a court order to release information, an employee is allowed to disclose information to notify a LEO about release from a 72-hour (also applies to 14-day or 30day) hold of a specific patient who is under criminal investigation.
- The employee may notify the LEO about the release of a patient who was involuntarily detained if all the following conditions are met:
  - The LEO to whom the disclosure is to be made initiated the written request for the hold
  - The LEO also requested in writing notification of release when the hold was initiated
  - The LEO certified in writing that the patient is alleged to have committed a crime
- The notice from the facility employee to the LEO is limited to:
  - Person's name
  - Address
  - Admission date for evaluation
  - Certification date for intensive treatment (if applicable, up to 14 or 30 additional days of treatment at the discretion of the facility's professional staff)
  - Date of release [45 C.F.R. § 164.512(f); Cal. Welf. & Inst. Code §§ 5152.1, 5250.1, 5270.15, 5328(a)(16).]
- In any case, with a valid patient or patient's representative authorization, the mental health facility may disclose the patient-identifying information.

State Health Information Guidance p.114

Case Example

- Mental Health Provider to Health Information Organization (HIO)
- The HIO and its participants must comply with the laws protecting the privacy of mental health information as it moves within and across the health information exchange (HIE). Mental health information and related information are specially protected. In most circumstances, mental health information may only be shared with the authorization of the patient or patient's representative. [45 C.F.R. § 164.502(a); Cal. Welf. & Inst. Code § 5328.]
- Despite the restrictions, facilities and providers subject to LPS may share information with an HIO provided a business associate agreement (BAA) is in place. [42 U.S.C. § 17938; 45 C.F.R. §§ 164.308(b), 164.314(a); Cal. Welf. & Inst. Code § 5328(a)(25).]
- The HIO must implement safeguards to protect the privacy and security of the health information as required by HIPPA and California law. [45 C.F.R. §§ 164.306, 164.308(a); Cal. Health & Safety Code § 1280.18.]
- If the HIO does not have a BAA in place, the mental health information can be shared with a valid patient or patient's representative authorization

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Summary

- It is vital that mobile crisis teams understand BHIN 23-025 requirements for maintaining privacy and confidentiality for individuals during mobile crisis encounters and beyond.

- Mobile crisis teams should understand the implications of HIPAA and 42 C.F.R. Part 2 as health care providers in crisis situations. Mobile crisis teams are required to employ safeguards that respect an individual's right to confidentiality and privacy when possible.

- 42 C.F.R. Part 2 is only applicable to any individual or entity that is federally assisted and holds itself out as providing alcohol or substance use diagnosis, treatment, or referral for treatment and the information protected by 42 C.F.R. Part 2 is any information that identifies an individual directly or indirectly as having a current or past drug or alcohol problem or as a participant in a covered program.

Summary

- Understanding legal standards for releasing and/or exchanging information during crisis events supports smooth transitions of care and ensures an individual's safety when further treatment is needed.
- Understanding different systems of care and coordinating with multiple providers during a crisis event and beyond supports mobile crisis teams with legal and ethical standards for maintaining privacy and confidentiality as appropriate.

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Thank You!

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M-TAC

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