

# **SHARING INFORMATION ABOUT CHILDREN IN FOSTER CARE**

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## **Child Welfare Agency Files**

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## Introduction

County child welfare agencies play a critical role coordinating care for and facilitating delivery of health and education services to foster youth. To fulfill this obligation, child welfare agencies must be able to disclose relevant information about foster youth and their families to appropriate parties, such as health care providers, schools, juvenile courts, and foster caregivers.\* However, disclosures by child welfare agencies are limited by state laws that protect the confidentiality of child welfare files generally and by federal and state laws that protect the confidentiality and privilege of certain medical, mental health, substance abuse, and education information housed within those files.

Although the laws limit disclosure of information in a child welfare file, the legal framework to allow the disclosure of at least some information currently exists. Yet confusion about the application of these laws sometimes prevents appropriate disclosures. Removing unnecessary barriers to sharing information for the coordination of services for children in foster care is a priority of the California Child Welfare Council and the Judicial Council's Blue Ribbon Commission on Children in Foster Care.

The Judicial Council's Center for Families, Children & the Courts has prepared this brief for legal experts to assist in the discussion of how best to facilitate appropriate disclosures from child welfare. The brief provides an overview of the relevant confidentiality laws, with a focus on section 827 of the Welfare and Institutions Code.† It also highlights some outstanding questions regarding section 827 that, if addressed, could improve appropriate information sharing. The brief is not intended as a legal analysis; rather, it is intended to provide legal information to serve as a basis for further discussions about how to ensure that child welfare services, health care providers, schools, attorneys, juvenile courts, and foster caregivers obtain the information they need to serve foster youth better.

## Summary

Child welfare agencies face what appear to be conflicting obligations. On the one hand, some federal and state laws obligate them to disclose certain information in their files to facilitate care coordination and service delivery for foster youth. On the other hand, other federal and state laws *restrict* them from sharing information in their files. Applicable laws, however, allow

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\* The child welfare agency's ability to obtain this information from schools, health care providers, and other sources in the first place is addressed in four companion legal briefings entitled *Sharing Information about Children in Foster Care and subtitled Mental Health Information, Health Information, Substance Abuse Treatment Information, and Education Information*.

† Code citations in this briefing are to California Welfare and Institutions Code, unless otherwise stated.

the agencies to navigate these obligations and disclose some information. This brief provides an overview of the relevant laws.

*Section I* of this brief summarizes the laws that obligate child welfare agencies to collect and disclose information about foster youth.

*Section II* summarizes the federal and state laws that restrict access to the child welfare case file generally, including an in-depth review of section 827 of the California Welfare and Institutions Code.

*Section III* summarizes the federal and state laws that protect the confidentiality and restrict disclosure of certain information often housed in a child welfare file.

*Section IV* summarizes when and what child welfare agencies can share given this framework of privacy laws. Child welfare agencies are able to share at least some information in their files in many contexts.

*Section V* describes some special considerations and limitations when disclosing information subject to section 827, including redisclosure limitations, disclosure for use in criminal cases, and disclosure of records regarding deceased children.

*Section VI* concludes by highlighting some of the outstanding questions regarding section 827 that, if addressed, could improve appropriate information sharing.

## **Briefing**

### **Section I. Federal and state laws require child welfare agencies to maintain health and education information in each child’s case plan and to provide that information to specified individuals and entities.**

- Federal and state laws require child welfare agencies to maintain health and education information in their files. Title IV-E of the Social Security Act (42 U.S.C. § 670 et seq.) requires child welfare agencies to maintain health, mental health, and education records for children in foster care. (42 U.S.C. §§ 671(a)(16), 675(1)(C).) State law also requires the child welfare agency to maintain in its files for each child in foster care a case plan that includes a health and education summary. (Welf. & Inst. Code, § 16010(a).) Companion briefings in this series address the legal authority of schools, health care providers, and others to disclose health and education information to child welfare agencies for this purpose.
- Once health and education information is in the file, federal and state law requires child welfare agencies to share it with specified individuals and agencies. Title IV-E of the Social Security Act requires states to have a case review system that includes procedures for ensuring that a copy of a child’s health and education record is supplied to the foster parent or foster care provider with whom the child is placed. (42 U.S.C. §§ 671(a)(16), 675(5)(D).)
- The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 requires that each state have a plan for ensuring the educational stability of a child while he or she is in foster care, as well as a plan to coordinate health care for foster children. Included is a plan for the child welfare agency to ensure that when foster

youth change schools, all education records are sent from the former school to the new school, as well as provisions that consider the appropriate sharing of medical and mental health information. (42 U.S.C. § 622(b)(15)(A).)

- State law requires the child welfare agency to include a child’s health and education summary in court reports. (Welf. & Inst. Code, §§ 16501.1(f)(14), 16010(b).) State law also requires the child welfare agency to furnish the juvenile court with the information it requires in dispositional hearings, including a social study with any information that may be relevant to a proper disposition. (Welf. & Inst. Code, § 280.)
- State law requires the child welfare placing agency to provide a caretaker with a copy of the child’s current health and education summary (Welf. & Inst. Code, § 16010(c)), as well as medication and treatment information about foster youth in their care. (Welf. & Inst. Code, § 16010.5; see also Welf. & Inst. Code, § 16501.1(j).)
- The federal *Child Welfare Policy Manual* and the California Department of Social Services (CDSS) *Child Welfare Services Manual* include provisions requiring child welfare caseworkers to provide information to certain individuals and agencies. For example, the CDSS manual requires that the caseworker “[p]rovide respite and out-of-home care providers information of any known or suspected dangerous behavior of the child.” (CDSS, *Policies and Procedures Manual: Child Welfare Services* (1993), p. 82, 31-310.16.)

## **Section II. Federal and state child welfare and juvenile court laws protect the confidentiality of child welfare files generally.**

### ***Title IV-E of the federal Social Security Act***

- Title IV-E of the Social Security Act requires that states that receive federal child welfare funds have a state plan, approved by the Secretary of Health and Human Services, that “provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan . . .” (42 U.S.C. § 671(a)(8).)

### ***The federal Child Abuse Prevention and Treatment Act***

- The Child Abuse Prevention and Treatment Act (CAPTA) requires that states include in their state plan assurances that their state program will preserve the confidentiality of reports and records made and maintained under CAPTA to protect the rights of children and their parents, and it specifies a limited list of individuals and agencies to which these records may be made available. (42 U.S.C. § 5106a(b)(2)(B)(viii).)

### ***California Welfare and Institutions Code section 827***

- Section 827 limits access to the “juvenile case file.” The scope of information included in the definition of *juvenile case file* is slightly different in statute, court rule, and case law.
- In statute, the definition of *juvenile case file* is “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.” (Welf. & Inst. Code, § 827(e).)

- The California Rules of Court define *juvenile case file* by incorporating the definition from section 827 but adding reference to reports and documents of “social workers of child welfare programs, and CASA volunteers” in addition to the probation officer, and including reference to reports, exhibits, photographs, and other items in addition to reports and documents. (Cal. Rules of Court, rule 5.552(a).)
- The definition of *juvenile case file* in case law and attorney general opinion follows: Some courts have interpreted the definition of *juvenile case file* in section 827(e) broadly to include any documents and other information housed in a county child welfare agency file regarding a child who has suffered or is at serious risk of suffering abuse or neglect that brings the child within the jurisdiction of the juvenile court under section 300. This includes information in agency files where no juvenile court proceedings have been instituted and the matter is handled informally. (*T.N.G. v. Superior Court* (1971) 4 Cal.3d 767, 780–781 [94 Cal.Rptr. 813]; *In re Elijah S.*, (2005) 125 Cal. App.4<sup>th</sup> 1532 [24 Cal.Rptr.3d 16, 23–24, 30]. See 87 Ops.Cal.Atty.Gen. 72, 75 (2004).)

### **California Welfare and Institutions Code section 10850**

- Section 10850 protects the confidentiality of any records made or kept by any public officer or agency concerning any individual in connection with the administration of any provision of the Welfare and Institutions code relating to any form of “*public social services*” for which grants-in-aid are received by the state from the federal government. (Welf. & Inst. Code, § 10850(a).)
- “*Public social services*” include activities of state and local government administered or supervised by the CDSS. They provide aid or services to those who, because of their economic or social condition, are in need and may benefit. (Welf. & Inst. Code, §§ 10051, 10850(a) & 10850(f).)
- Protected information includes all applications and records kept in connection with the administration of child welfare that identifies the applicant or recipient by name or address. (Welf. & Inst. Code, § 10850(a).)
- Case law says that records in a child welfare agency file regarding the parent of a child under court jurisdiction are protected by section 10850. (*Lorenza P. v Superior Court* (1988) 197 Cal.App.3d 607, 612 [242 Cal.Rptr. 877, 879].)
- Case law says that sections 10850 and 827 do not purport to deal with the same subject matter, though there can be some overlap at times. (*In re Keisha T.* (1995) 38 Cal.App.4th 220, 238 [44 Cal.Rptr.2d 822, 832].)
- Case law says that the focus of Section 10850 is the confidentiality of the identity of aid recipients. (*In re Keisha T.* (1995) 38 Cal.App.4th 220, 238 [44 Cal.Rptr.2d 822, 832].)

### **Section III. Other federal and state laws protect the confidentiality and privilege of certain information in child welfare files.**

Several federal and state statutes protect the confidentiality and privilege of sensitive information, including health, mental health, substance abuse, and education information. The

child welfare agency is required to honor any applicable federal and state confidentiality and privilege laws that apply to information housed in the agency file, in addition to any laws that protect the confidentiality of the child welfare file generally. (See Welf. & Inst. Code, § 827(a)(3)(A); Cal. Rules of Court, rule 5.552(h).) The federal and state confidentiality and privilege laws that may apply to information housed in a child welfare agency file include but are not limited to the following:

- ***The Privacy Rule under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)*** (45 C.F.R. § 160 and 164.) Protecting the confidentiality and limiting disclosure and use of certain health and mental health information.
- ***The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act (CAAPTR)*** (42 U.S.C. § 290dd-2; 42 C.F.R. § 2.) Protecting the confidentiality and limiting disclosure and use of information about individuals in certain substance abuse treatment programs.
- ***The Family Educational Rights and Privacy Act (FERPA)*** (20 U.S.C. § 1232g; 34 C.F.R. § 99.) Protecting the confidentiality of and limiting access to and disclosure of education records.
- ***The California Confidentiality of Medical Information Act (CMIA)*** (Civ. Code, § 56.05 et seq.) Protecting the confidentiality and limiting disclosure and use of some health and mental health information.
- ***The California Lanterman-Petris-Short Act (LPS)*** (Welf. & Inst. Code, § 5328 et seq.) Protecting the confidentiality and limiting disclosure and use of information resulting from provision of certain mental health services.
- ***The California Evidence Code and evidentiary privilege*** (Evid. Code, §§ 990 et seq. and 1010 et seq.) Limiting the disclosure and use of “confidential communications” as evidence in court proceedings.
- ***The California Education Code*** (Ed. Code, § 49075.) Protecting the confidentiality and limiting disclosure and use of pupil records.
- ***The California Welfare and Institutions Code*** (Welf. & Inst. Code, § 10850.) Protecting the confidentiality and limiting disclosure of records relating to the administration of public social services.
- ***The California Penal Code*** (Pen. Code, § 11167.5.) Limiting disclosure of certain child abuse and investigation reports.

This list is not exclusive. For more, see section 31-502.451 of the CDSS *Child Welfare Services Manual*, which provides examples of other state confidentiality laws that might apply to limit disclosure of information in a child welfare file.

**Appendix B** of this document describes some of the above statutes in more detail. The appendix includes examples highlighting when information in a child welfare case file may be subject to protection under one of the above statutes and describing the child welfare agency’s duty in those situations.

## Section IV. The applicable confidentiality laws allow the child welfare agency to release information from its files in some circumstances.

### ***Release of information protected by California Welfare and Institutions Code section 827***

#### **1. Release of information without need of a court order**

- a. Under section 827, certain individuals and agencies may inspect and in some cases receive copies of documents in a child welfare agency file protected by section 827 without need of a court order.
  - Section 827 authorizes certain individuals and agencies to access information in the child welfare agency file. Section 827 grants different levels of access rights to different individuals. Some individuals and agencies are authorized to inspect and receive copies of information whereas others are authorized only to inspect information. Authorization to inspect records does not include the authority to copy records. (*In re Gina S.* (2005) 133 Cal.App.4th 1074, 1082 [35 Cal.Rptr.3d 277, 282].) **Appendix A** provides a complete description of the individuals and entities able to inspect and receive copies of records under section 827.
  - If parts of the child welfare file are protected by other confidentiality and privilege laws, the child welfare agency may release those parts, absent a court order, to any individual or agency that is both (1) described in section 827 as authorized to inspect or receive copies of information in the child welfare file, and (2) “entitled to access [the information] under the other state law or federal law or regulation without a court order . . .” (Welf. & Inst. Code, § 827(a)(3)(A); see Cal. Rules of Court, rule 5.552(h): “Under no circumstances must this rule or any section of it be interpreted to permit access to or release of records protected under any other federal or state law . . . except as provided in those statutes . . .”)

If an individual or agency does not meet the latter requirement, the individual or agency must seek a court order to inspect or receive copies of the protected information. (Welf. & Inst. Code, § 827(a)(3)(A).)

If an individual or agency does not meet the former requirement—that is, is not described in section 827 as authorized to inspect or receive copies of information in a child welfare file—nothing precludes that individual or agency from seeking the information from the original source if that individual or agency is entitled to the information from the original source. Otherwise, the individual or agency must seek a court order to inspect or receive copies of the file. (Welf. & Inst. Code, § 827(a)(1)(P).)

**Appendix B** includes examples highlighting how the rule in subsection (a)(3)(A) of section 827 may apply in practice.

- b. Under section 827.10, the child welfare agency may “permit” specified individuals to inspect or receive copies of child welfare agency files protected by section 827 during certain family or probate court matters without need of a court order.
  - Section 827.10 says: “Notwithstanding section 827, the child welfare agency is authorized to permit its files and records relating to a minor, who is the subject of

either a family law or a probate guardianship case involving custody or visitation issues, or both, to be inspected by, and to provide copies to, the following persons, if these persons are actively participating in the family law or probate case.” These “persons” include but are not limited to the “judge . . . or other hearing officer assigned to the family law or probate case,” “[t]he parent or guardian of the minor,” an “attorney for a party to the family law or probate case,” a “court appointed investigator,” and “[c]ounsel appointed for the minor in the family law case.” (Welf. & Inst. Code, § 827.10(a).)

- The child welfare agency must follow all applicable laws protecting the privilege or confidentiality of information in its files if that applicable law would prohibit or limit release of some or all information in the file. (Welf. & Inst. Code, § 827.10(b).) (See section III of this document and appendix B for discussion of other applicable confidentiality laws.)
  - Information released must be maintained in the confidential portion of the family law or probate file. (Welf. & Inst. Code, § 827.10(d).)
  - Section 827 gives some of these same individuals and agencies a right to inspect but not receive copies of information in the child welfare file. (See Welf. & Inst. Code, § 827(a)(1)(L).) Section 827.10 allows the child welfare agency to provide these individuals with copies of the files and records.
- c. Under sections 830 and 18961.7, the child welfare agency may release information to members of “18951” and “18961.7” multidisciplinary personnel teams without need of a court order.
- Section 827 authorizes “[m]embers of children’s multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor” to *inspect but not receive copies* of information in the child welfare agency file. (Welf. & Inst. Code, § 827(a)(1)(K), (a)(5).) The statute does not define “multidisciplinary team” for this purpose.
  - However, sections 830 and 18961.7 allow child welfare agencies to *release copies* of information protected by section 827 to members of multidisciplinary teams created under sections 18951 and 18961.7 of the Welfare and Institutions Code (“18951 MDTs” and “18961.7 MDTs”), notwithstanding the limits in section 827.
  - Section 830 authorizes child welfare agencies to release information in the child welfare agency file to 18951 MDT team members notwithstanding section 827 “if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification, management, or treatment of child abuse, or the provision of child welfare services.” (Welf. & Inst. Code, § 830; see also Welf. & Inst. Code, § 18951.)
  - Section 18961.7 authorizes child welfare agency team members to release information in the child welfare agency file to 18961.7 MDT members “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 the disclosure occurs within “a 30-day period, or longer if documented good cause exists, following a report of suspected child abuse or neglect.” (Welf. & Inst. Code, § 18961.7(c)(1).)

- Authorized and governed by different laws, 18961.7 MDTs and 18951 MDTs are different entities. For example, an 18951 MDT must have at least three members, whereas an 18961.7 MDT may have as few as two members. **Appendix C** provides more detail about each of these teams and the differences between them.
- Sections 830, 18951, and 18961.7 limit how MDT team members may use and redisclose information once shared. The statutes also address whether team members can share information that may be protected by additional confidentiality and privilege laws. **Appendix C** provides more information.

## 2. Release of information by court order

- Individuals and agencies not specifically authorized to inspect or receive copies of a juvenile case file may obtain access by petitioning the juvenile court and obtaining a juvenile court order. (Welf. & Inst. Code, § 827(a)(1)(P); Cal. Rules of Court, rule 5.552(b)(3), (c)). The process for obtaining a court order is stated in court rules. (Cal. Rules of Court, rule 5.552(e).)
- Parties to civil and criminal cases as well as the press have obtained access to information in child welfare agency files under these court orders. (See *In re Keisha T.* (1995) 38 Cal.App.3d 220, 232-233 [44 Cal.Rptr.2d 822, 828-829], reviewing prior decisions in which other individuals, such as the press and parties to civil and criminal cases, were granted access to files.)
- Court Appointed Special Advocate (CASA) volunteers obtain access to information in the child welfare agency file under a court order. State law says that “[t]o accomplish the appointment of a CASA, the judge making the appointment shall sign an order, which may grant the CASA the authority to review specific relevant documents . . . to the same extent as any other officer of the court appointed to investigate proceedings on behalf of the court.” (Welf. & Inst. Code, § 103(h).)
- The process and standard for obtaining a court order if the petitioner wants to obtain access to the records of a deceased child differ from the process and standard if the petitioner wants to obtain records that are protected by additional confidentiality or privilege laws. (See and compare Cal. Rules of Court, rule 5.552(e) with Welf. & Inst. Code, § 827(a)(2), (a)(3)(A).)

### ***Release of information protected by California Welfare and Institutions Code section 10850***

- **Section 10850** allows child welfare agencies to release protected information for purposes directly connected with the administration of the child welfare system or any criminal investigation or prosecution conducted in connection with the administration of such a program. (Welf. & Inst. Code, § 10850(a).)
- Information can also be released to school superintendents as necessary for the administration of federally assisted programs providing need-based services to individuals. (Welf. & Inst. Code, § 10850(b).)
- Limited information including a name, physical description, and address can also be given to a law enforcement agency investigating a criminal act. (Welf. & Inst. Code, § 10850(b), (e).)

- County child welfare departments may release lists of recipients of public social services to other county welfare departments and the CDSS for purposes directly connected with the administration of public social services. (Welf. & Inst. Code, § 10850(b).)

## Section V. Special considerations and limitations when disclosing information subject to section 827

Some special limits and considerations are present when disclosing information subject to section 827 of the Welfare and Institutions code. This section of the brief highlights the three issues that most frequently raise questions: limits on redisclosure, constitutional considerations when information will be used in criminal proceedings, and access to records regarding deceased children.

### 1. Limits on redisclosure

Section 827 states that the recipients of information under section 827 generally cannot make an independent decision to further disseminate the information to others.

- “A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to [section 827]. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is 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.” (Welf. & Inst. Code, § 827(a)(4).)
- This section has been interpreted to prohibit further dissemination by individual recipients as well as agency recipients. (*In re Tiffany G.* (1994) 29 Cal.App.4th 443, 450-452 [35 Cal.Rptr.2d 8, 9-12], order prohibiting mother and stepfather from disseminating confidential documents generated during dependency proceedings, even to agencies or individuals listed in section 827 as authorized to receive the information, was not invalid.)
- Courts have interpreted this section to mean that the juvenile court may recognize and authorize limited further dissemination of records by a recipient, but the recipient is prohibited from making an independent decision to disclose the records. As explained by one appellate court:

[S]ection 827 does not prohibit any disclosure that may result in further dissemination of the juvenile court records. For example, in cases where juvenile court records are disclosed for use in other court proceedings, there will be some dissemination. [¶] Instead, the prohibition against dissemination recognizes the exclusive authority of the juvenile court to determine who may have access to juvenile court records. This provision prohibits one who receives access to juvenile court records from independently making a decision to disclose such records to others not authorized by the statute or court order. It is the juvenile court, not the recipient, that has the authority to decide to whom juvenile court records may be released.

(*In Re Keisha T.*, (1995) 38 Cal. App. 4th. 220, 234 [44 Cal.Rptr.2d 822, 829–830].)

- Questions remain about how broadly this redisclosure limitation applies and how it applies in certain contexts—for example, the limits on redisclosure it places on foster caregivers who obtain the health and education passport of children in their care and want to use or redisclose the information, or on former foster youth who obtain their own files and want to use the information for different purposes, such as college enrollment, financial aid applications, or immigration.

## 2. Constitutional issues: Use of records in criminal proceedings

Privacy protections apply when criminal defendants seek information from a juvenile case file. At the same time, special access rules apply when information in the file may be considered exculpatory in a criminal case.

- On the one hand, even if an individual or agency has a right to inspect information in a juvenile case file under section 827, the California Constitution limits that right in certain contexts.

In 2008, California voters enacted “Marsy’s Law,” a ballot proposition that amended the California Constitution. The California Constitution, article I, section 28(b) now guarantees to victims of crime the right “[t]o prevent the disclosure of confidential information or records to the defendant, the defendant’s attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass [the victim] or [the victim’s] family, or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law” as well as the right “[t]o be reasonably protected from the defendant and persons acting on behalf of the defendant.” (Cal. Const., art. I, § 28(b)(4),(2).)

For this purpose, “a ‘victim’ is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term ‘victim’ also includes the person’s spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term ‘victim’ does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim.” (Cal. Const., art. I, § 28(e).) Marsy’s Law may be read to limit, for example, a parent defendant’s right to certain information in a child welfare agency file.

- On the other hand, defendants, including parent defendants, may have a right to certain exculpatory information in a juvenile case file under the Due Process clause of the Fourteenth Amendment and Confrontation clause of the Sixth Amendment to the U.S. Constitution. (See *Brady v. Maryland* (1963) 373 U.S. 83; *Davis v. Alaska* (1974) 45 U.S. 308; see also *Pennsylvania v. Ritchie* (1987) 480 U.S. 39.)

## 3. Access to records of a deceased child

Several California laws allow access to discrete information in the child welfare file about child fatalities or allow access for specific individuals. For example, “the name, date of birth, and date of death of the child shall be subject to disclosure by the county child welfare agency pursuant to [the Public Records Act].” (Gov. Code, § 6252.6.). In addition, state law allows a county board of supervisors to receive and review records in a child welfare agency

file “relating to a child who has died and who had previously come to the attention of, or was under the supervision of, the county child welfare agency.” The board may receive and review the information only in closed session and is bound by all state and federal confidentiality laws. (Welf. & Inst. Code, § 16502.5.)

When these records are subject to section 827, access to the records can occur through one of two avenues. Section 826.7 says:

Juvenile case files that pertain to a child who died as the result of abuse or neglect shall be released by the custodian of records of the county welfare department or agency to the public pursuant to **Section 10850.4 or an order** issued pursuant to paragraph (2) of subdivision (a) of Section 827.

(Welf. & Inst. Code, § 826.7, emphasis added.)

Each avenue involves a different process that includes not only different standards for disclosure but different redaction requirements. As an example, section 10850.4 permits the district attorney (DA) to object to the disclosure of records, but if a petition for access is then made under section 827, the judge cannot factor the district attorney’s objection into the decisionmaking process.

## Section VI. Outstanding Questions

Many questions and concerns remain about how to interpret section 827 and how to apply it in the child welfare context. Some are noted here; however, this list of questions and concerns is not exhaustive.

### 1. Definitions for purposes of section 827

Questions abound regarding how to interpret terminology in the statute. Here are a few examples:

- The definition of *juvenile case file* is different under case law, court rules, and section 827 of the Welfare and Institutions Code.
- The statute distinguishes between inspection rights and rights to receive copies of files, but the terms *inspect* and *copy* are not defined. Further, the statute does not address, and no court has yet addressed, how to interpret and distinguish between “inspecting” and “copying” when records are stored, transmitted, or viewed in electronic format or information is transmitted orally, such as by phone.
- Questions remain about how to interpret the terms used to describe the individuals and agencies authorized to inspect or receive copies of records. For example, section 827(a)(1)(E) authorizes the following individuals to inspect and obtain copies from a juvenile case file:

*The attorneys for the parties, judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.*

(Welf. & Inst. Code, § 827(a)(1)(E))

*Actively participating* is not defined for this purpose. Neither is *involving the minor*. As a result, there is an open legal question regarding which attorneys, judges, court commissioners, and law enforcement officials may access records under this section and in which proceedings. For example, does the attorney for the defendant in an adult criminal trial may access a minor's juvenile dependency or child welfare file under this exception when that minor is involved in the criminal trial as a witness or victim?

- There is also an open legal question about whether section 827 restricts disclosure of only written or recorded information or whether it also limits testimony or other oral disclosures when that testimony may be based on information recorded in a juvenile case file. For example, does section 827 limits a child welfare social worker from testifying in a dependency hearing absent a court order authorizing the testimony?

## **2. Concerns and questions about scope**

The scope of the statute raises questions and causes concern. Here are just a few examples:

- There are concerns that the list of agencies and individuals currently authorized to inspect or receive copies of records is overbroad. Some individuals would like to limit access for some of these entities.
- Opinions differ about what in fact should be included in the definition of *juvenile case file* subject to section 827 confidentiality protections.
- Opinions vary about whether section 827 should restrict disclosure of only written or recorded information or whether it should restrict disclosure of all information in whatever format.

## **3. Questions about application of specific provisions of section 827**

Here are two examples of questions regarding how to interpret and apply specific subsections of section 827:

- ***Prohibition on independent dissemination***

Questions remain regarding how the prohibition against independent dissemination by the recipient of records protected by section 827 applies in practice. One question is how much authority foster youth have to disseminate their own records in different contexts. The child welfare agency is required to provide a foster youth who is aging out of care with a letter that includes the dates during which the child was within the jurisdiction of the juvenile court and a statement that the youth was in foster care in compliance with state and federal financial aid documentation requirements. (Welf. & Inst. Code, § 391(e)(2)(E).) This is information from the juvenile case file, and therefore, the minor's right to disseminate this information arguably is limited by the restrictions described above. The youth should be able to use this letter for financial aid or school applications because such use is authorized by section 391, but section 827 can be interpreted to limit the youth from using the

information for other purposes, such as immigration, without a court order. No court has explicitly addressed this issue.

- ***Release of records protected by other confidentiality and privilege laws***

When information in a child welfare file is subject to other applicable confidentiality and privilege laws, the child welfare agency is required to follow those laws. (See section III of this document.) How to apply those laws in practice, however, presents many questions.

For example, a child welfare agency file may contain the substance abuse treatment records of a foster youth. If the agency and its counsel determine that this information is subject to CAAPTR (42 U.S.C. § 290dd-2), the agency is required to comply with CAAPTR requirements regarding release of that information. If the child's parent requests a copy of the child's file, the agency must comply; however, the agency first must determine if it can release the substance abuse treatment records. CAAPTR says that parents do not have a right to access their child's substance abuse treatment records without a CAAPTR-compliant authorization allowing the release or a CAAPTR-compliant court order. With a CAAPTR-compliant authorization or order, the agency can release the CAAPTR records to the parent. Without, the agency must excise the CAAPTR-protected information before releasing a copy of the file to the parent. (See appendix B for more information on CAAPTR.) There are practical questions about how the child welfare agency can efficiently and effectively identify protected information in its files, identify which individuals and agencies may access that information, and implement appropriate limitations on disclosure.

#### **4. Tension between different laws**

In several situations, real or perceived tension exists between different confidentiality and access laws. Here are just two examples:

- ***Constitutional rights of victims versus constitutional rights of defendants***

There is tension between the confidentiality protections in section 827 and the constitutional rights of criminal defendants. Section 827 allows the DA to review juvenile case files. Although section 827 restricts the DA from disclosing any of this information independently, protections afforded criminal defendants by the federal and state constitutions obligate the DA to disclose certain material found in the juvenile case file to the defense. Similarly, tension exists between a defendant's federal and state constitutional rights to certain information in the juvenile case file and a victim's constitutional rights under the California Constitution to limit a defendant's access to that information.

- ***Different standards for release of records regarding a deceased child***

Multiple statutes address access to records after a child fatality in foster care. There are outstanding questions about how to harmonize and apply these rules in practice.

For example, state law provides two avenues to obtain the records in the juvenile case file of a deceased child. However, the two pathways involve different processes and different standards for release.

## **Conclusion**

Even though stakeholders need a clear understanding of the privacy protections required by law, federal and state confidentiality and privilege laws allow child welfare agencies to share certain information in the child welfare agency file with others.

Some questions remain, including questions regarding section 827 of the Welfare and Institutions code. This brief flags some but not all of those questions. Legislation, regulations, or rules of court may be needed to address some of the issues. Any clarification needs to balance the right to privacy with the court's and others' need to have information to make appropriate decisions regarding placement and services.

Federal law requires California to develop a comprehensive plan for the sharing of medical, mental health, and education information of children in foster care. The completion of this plan may require that any outstanding legal impediments to appropriate information sharing be identified and removed through legislation, regulations, or rules of court, as appropriate.

# Sharing Information on Children in Foster Care: Child Welfare Agency Files

## Appendix A

### WHO CAN INSPECT AND RECEIVE COPIES OF INFORMATION IN A CHILD WELFARE FILE UNDER WELFARE AND INSTITUTIONS CODE SECTION 827?

Section 827(a) of the Welfare and Institutions Code sets out the following rules that govern who is permitted access to information in juvenile case files:

#### 1. Individuals and entities authorized to *inspect and receive copies of juvenile case files*

- “The State Department of Social Services, to carry out its duties ... to oversee and monitor county child welfare agencies, children in foster care or receiving foster-care assistance, and out-of-state placements.” (Welf. & Inst. Code, § 827(a)(1)(I) & (5).)
- “Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.” (Welf. & Inst. Code, § 827(a)(1)(H) & (5).)
- “Court personnel.” (Welf. & Inst. Code, § 827(a)(1)(A), (E) & (5).)
- “The attorneys for the parties ... who are actively participating in criminal or juvenile proceedings involving the minor.” (Welf. & Inst. Code, § 827(a)(1)(A), (E) & (5); a parent’s attorney in a criminal matter also has access, but only to those records made available to the district attorney (*Lorenza P. v. Superior Court* (1988) 197 Cal.App.3d 607 [242 Cal.Rptr.877, 878]).)
- “[J]udges, referees, and other hearing officers ... who are actively participating in criminal or juvenile proceedings involving the minor.” (Welf. & Inst. Code, § 827(a)(1)(A), (E) & (5).)
- “[P]robation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.” (Welf. & Inst. Code, § 827(a)(1)(E) & (5).)
- “The minor who is the subject of the proceeding.” (Welf. & Inst. Code, § 827(a)(1)(C,D) & (5).)
- “The minor’s parents or guardian.” (Welf. & Inst. Code, § 827(a)(1)(C), (D) & (5).) This does not include stepparents who do not have custody (*In re Tiffany G.* (1994) 29 Cal.App.4th 443 [35 Cal.Rptr.2d 8]) or de facto parents (*In re B.F.* (2010) 190 Cal.App. 4th 811 [118 Cal.Rptr. 3d 561, 566].)
- “The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law” as well as the “county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action.” (Welf. & Inst. Code, § 827(a)(1)(B), (F) & (5).)

- “persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe.” (Welf. & Inst. Code, § 827(f).<sup>‡</sup>)

## 2. Individuals and entities authorized only to *inspect* juvenile case files

- “[A] judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, and the following persons, if actively participating in the family law case: a family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code, a court-appointed evaluator or a person conducting a court-connected child custody evaluation, investigation, or assessment pursuant to Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code.” (Welf. & Inst. Code, § 827(a)(1)(L) & (5).)

The access granted under this subsection should be compared to the access granted under section 827.10 of the Welfare and Institutions Code, discussed on page 5 of the brief, which permits the child welfare agency in its discretion to release copies of information in its file to designated family law and probate court participants.

- “The superintendent or designee of the school district where the minor is enrolled or attending school.” (Welf. & Inst. Code, § 827(a)(1)(G) & (5).)
- “Members of children’s multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor.” (Welf. & Inst. Code, § 827(a)(1)(K) & (5).)

The access granted to teams under this section should be compared to the access granted under the statutes discussed on page 6 of this briefing and in Appendix C, which permit the child welfare agency at its discretion to release information to specified types of multidisciplinary teams.

- “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

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<sup>‡</sup> Effective as of 1/1/15

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 may 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 may not contain the name of the minor.” (Welf. & Inst. Code, § 827(a)(1)(J) & (5).)

- “A court-appointed investigator who is actively participating in a guardianship case involving a minor pursuant to Part 2 (commencing with Section 1500) of Division 4 of the Probate Code and acting within the scope of his or her duties in that case.” (Welf. & Inst. Code, § 827(a)(1)(M) & (5).)
- “A local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders.” (Welf. & Inst. Code, § 827(a)(1)(N) & (5).)
- “Juvenile justice commissions as established under Section 225. The confidentiality provisions of Section 10850 shall apply to a juvenile justice commission and its members.” (Welf. & Inst. Code, § 827(a)(1)(O) & (5).)
- Any other person who may be designated by court order of the judge of the juvenile court in response to the filing of a petition. (Welf. & Inst. Code, § 827(a)(1)(P) & (5).)

## Appendix B

### OTHER CONFIDENTIALITY AND PRIVILEGE LAWS

Several federal and state statutes protect the confidentiality and privilege of certain sensitive information, including health, mental health, substance abuse, and education information. When such information is held in a child welfare agency file, these confidentiality and privilege laws may apply to control whether, when, how, and to whom the child welfare agency can disclose that information. As a result, an agency or individual authorized under section 827 to inspect or receive copies of a child welfare agency file may nevertheless be restricted from access to certain information in that file. Depending on the situation, confidentiality and privilege statutes may protect both information obtained by the child welfare agency from third parties and that generated by the child welfare agency itself. The following list of federal and state confidentiality and privilege statutes is for illustrative purposes only and is by no means exhaustive. Some of the descriptions include examples to illustrate how the statute might apply to limit or allow the release of information in a child welfare file.

#### Federal Laws

- **The Health Insurance Portability and Accountability Act (HIPAA)—Privacy Rule** (45 C.F.R. §§ 160, 164)

HIPAA protects the confidentiality of medical and mental health information held by “covered entities.” Covered entities include health care providers who transmit health information in electronic form, health plans, and health care clearinghouses. (45 C.F.R. § 160.103.) Generally, only covered entities and their “business associates” must comply with HIPAA’s confidentiality provisions. Therefore, health information in child welfare agency files is subject to HIPAA *only* if the child welfare agency qualifies as a covered entity or received the protected information while acting as the business associate of a covered entity under a “business associate” contract. (It is extremely unusual for a child welfare agency to qualify as a covered entity or to receive information about a foster youth while acting as the business associate of a covered entity—but should the situation ever arise, medical information in the child welfare file would be subject to HIPAA restrictions on disclosure.)

*See the AOC briefing “Sharing Information about Children in Foster Care: Health Care Information” for more on HIPAA.*

- **The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act (CAAPTR)** (42 U.S.C. § 290dd-2; 42 C.F.R. § 2)

CAAPTR restricts the disclosure and use of patient identifying information about individuals in substance abuse treatment. CAAPTR regulations apply only when treatment was provided by certain agencies. However, third-party recipients of information from these agencies must also comply with CAAPTR regulations. (See 42 C.F.R. § 2.32.) For example, if a county child welfare agency obtains substance abuse treatment records from a CAAPTR provider, the

information remains subject to CAAPTR, and the child welfare agency can only share that information subject to CAAPTR restrictions on disclosure. Release of CAAPTR-protected information typically requires a specialized court order or the written consent of the patient authorizing the treatment provider to disclose the protected information to a third party. California Health and Safety Code section 11845.5 (see below) also protects certain substance abuse treatment records and requires written authorization for their disclosure.

*Example: A child welfare agency file may contain the substance abuse treatment records of a foster youth. The youth has a general right to inspect and receive copies of information in her own child welfare file pursuant to section 827. If the agency and its counsel determine that the substance abuse treatment information in the file is subject to CAAPTR, however, the agency must also comply with CAAPTR requirements governing that information's release. The youth is entitled under CAAPTR to review her own treatment records, so the agency must allow her to inspect or receive copies of that information from her file. On the other hand, if the file also contains substance abuse treatment information on one of her parents and that information is subject to CAAPTR, the agency cannot provide that particular information to the minor without either a CAAPTR-compliant authorization release signed by that parent or a CAAPTR-compliant court order.*

*See the AOC briefing "Sharing Information about Children in Foster Care: Substance Abuse Treatment Information" for more on CAAPTR and its restrictions on disclosure.*

- **The Family Educational Rights and Privacy Act (FERPA)** (20 U.S.C. § 1232g; 34 C.F.R. § 99)

FERPA protects the confidentiality of education records held by certain educational agencies and institutions. Educational agencies subject to FERPA are generally only authorized to release education records to a third-party recipient such as a child welfare agency when the recipient will not further disclose the information to any other party without the consent of the parent or eligible student. (34 C.F.R. § 99.33(a).) Educational agencies and institutions may release information to a third-party recipient knowing that the recipient will make further disclosures of the information, however, if the further disclosures will be made only to parties who are authorized to receive educational information without prior consent under 34 Code of Federal Regulations part 99.31 (2010). (34 C.F.R. § 99.33(b).)

### California Laws

- **The Confidentiality of Medical Information Act (CMIA)** (Civil Code, § 56 et seq.)

CMIA protects the confidentiality of health and mental health information held by health care providers, health plans and health care contractors and limits their latitude to disclose that information. (Civ. Code, § 56.10.) Once protected information is disclosed by a health care provider to a third-party recipient such as a child welfare agency, CMIA limits and controls the recipient's ability to release that information *in some cases*, depending in part on how the recipient obtained the information. (Civ. Code, § 56.13.)

For example, CMIA allows a health care provider to disclose protected health information to a third party bearing a consent form signed by the patient that authorizes such disclosure—but CMIA also prohibits the third-party recipient from disclosing that information to any other party except in accordance with a new authorization or as required or permitted by other provisions of CMIA or by law. (Civ. Code, § 56.13.)

CMIA does not limit a third-party recipient from releasing protected information in every case, though. For example, CMIA does not prohibit a third-party recipient of health information from further disclosing that information if the recipient obtained the information with a court order. (See Civ. Code, § 56.13.) There are other examples.

Thus, depending in part on how the child welfare agency obtained the information, health and mental health information in the child welfare file may or may not be subject to CMIA restrictions on disclosure.

*Example: The physician of a 15-year-old dependent releases information about her pregnancy to a social worker who holds a CMIA-compliant authorization signed by the youth. The social worker places the pregnancy information in the youth's child welfare agency file. The biological mother of the youth later requests a copy of the file, which a parent has the general right to inspect and receive copies of under Welfare and Institutions Code section 827. However, the welfare agency must also comply with CMIA restrictions on the release of protected health information. CMIA does not allow the agency to release the pregnancy information to the parent unless the parent first obtains the authorization of the youth or goes through a legal process such as obtaining a court order for access to the information.*

*See the AOC briefing "Sharing Information About Children in Foster Care: Health Care Information" for more on CMIA.*

- **The Lanterman-Petris-Short Act (LPS)** (Welf. & Inst. Code, § 5328 et seq.)

LPS protects the confidentiality of information and records that result from provision of certain types of mental health services, as described in Welfare and Institutions Code section 5328. LPS limits how that information can be used and redisclosed by a provider as well as by a third-party recipient. For example, if a county social worker obtains health information protected by LPS pursuant to a court order, further disclosure of this information is governed by LPS. (Welf. & Inst. Code, §§ 5328, 5328.04.) Exceptions in LPS do allow for some disclosure. For example, LPS allows protected mental health information and records to be disclosed between persons who are trained and qualified to serve on 18951 MDTs. However, there are restrictions on further dissemination of information subject to LPS. (Welf. & Inst. Code, § 5328(l); see also Welf. & Inst. Code, § 18964.)

*See the AOC briefing "Sharing Information about Children in Foster Care: Mental Health Care Information" for more on LPS.*

- **Evidence Code—evidentiary privilege** (Evid. Code, §§ 990 et seq., 1010 et seq.)

*Evidentiary privilege* restricts the use and disclosure of “confidential communications” as evidence in court. Confidential communications as defined in the code include communications between a patient and a doctor or therapist made in a confidential setting.

Privileged confidential communications cannot be disclosed in court testimony, court reports, or documents attached to or submitted with a court report unless the patient has waived the privilege. (Evid. Code, §§ 990 et seq., 1010 et seq.) In dependency cases, a child 12 years of age or older is presumed mature enough to waive privilege on his or her own behalf; otherwise, privilege can only be waived by the child’s attorney. Neither the court, the child welfare agency, a health care provider, nor a parent may waive privilege for a dependent child. (Welf. & Inst. Code, § 317(f).) Disclosure of confidential communications by a health care provider to a third party does not automatically waive privilege. Thus, a child welfare agency file may contain information that is no longer protected by confidentiality law but remains protected by privilege. When asked to disclose privileged communications for a court proceeding, the holder of privilege, a person “authorized” by the holder, and the health care provider are all authorized, and in some cases required, to claim privilege on behalf of a patient. (Evid. Code, §§ 994–995, 1014–1015.) There are outstanding questions regarding how the child welfare agency should proceed in such cases and whether, for example, the child welfare agency has a duty to assert privilege or inform the privilege holder so that privilege can be asserted.

There are some situations in which privilege never attaches to what are otherwise confidential communications. (See, e.g., Evid. Code, §§ 1017, 1024.) There is also case law establishing that information protected by privilege can sometimes be used, in a circumscribed way, as evidence in dependency proceedings. (See, e.g., *In re Kristine W.*, 94 Cal.App.4th 521 (2001); *In re Mark L.*, 94 Cal.App.4th 573 (2001); but see also *In re Karen P.*, 200 Cal.App.4th 908 (2011).)

*Example:* A social worker obtains mental health information about a dependent child through exceptions in CMIA and LPS that allow release of protected mental health information to a social worker for care coordination purposes. (See exceptions in Civ. Code, §§ 56.10(c), 56.103; Welf. & Inst. Code, § 5328.04.) These exceptions allow a therapist to disclose information to the social worker for care coordination purposes, but this disclosure does not waive evidentiary privilege because neither the therapist nor the social worker has authority to waive the child’s privilege. The social worker places this information in the child welfare file. The social worker is asked to include this information in a report that will be submitted as evidence to the juvenile court, but the information is still protected by evidentiary privilege and cannot be included without first addressing the privilege issue.

- **Education Code section 49075** requires that authorized recipients of school records obtained with parental consent be notified that “transmission of the information to others without the written consent of the parent is prohibited.”

- **Health and Safety Code section 11845.5** protects certain substance abuse treatment records and controls redisclosure by third-party recipients.
- **Penal Code section 11167.5** makes certain child abuse reports and investigative reports confidential and strictly limits to whom they may be disclosed. The child welfare agency must abide by these restrictions on disclosure even where an individual or entity otherwise has authorization to inspect or obtain copies of records under Welfare and Institutions Code section 827. (See Welf. & Inst. Code, § 827(A)(3)(a); Cal. Rules Court 5.552(h).)
- **Child fatality restrictions:** The California Department of Social Services (CDSS), in the section of its Manual of Policies and Procedures (MPP) entitled “Child Fatality Reporting and Disclosure Requirements,” notes that counties “must adhere to all laws that govern confidentiality of the release of information” and lists a number of examples of state laws that may limit release of information from a child welfare file that is otherwise being disclosed regarding a child fatality. (CDSS *Child Welfare Services Manual*, § 31-502.451.)

## Appendix C

### ADDITIONAL INFORMATION ABOUT MULTIDISCIPLINARY TEAMS

Many counties have established multidisciplinary teams or have ongoing meetings that are multidisciplinary in scope, such as citizen review panels, team decision meetings, and permanency team meetings. There are ongoing questions about how much information a child welfare agency can provide to these groups without a court order. Several California statutes authorize a child welfare agency to disclose information to team members in specific multidisciplinary contexts. To the extent that a county team or meeting panel satisfies the pertinent statutory definition of a multidisciplinary team, child welfare agencies may provide information to team members as prescribed under the applicable statute. This appendix gives three examples of multidisciplinary teams permitted to receive confidential information from child welfare agencies and the statutes that authorize the disclosure (all section numbers refer to the Welfare and Institutions Code unless stated otherwise).

#### 1. Children’s Multidisciplinary Teams

- Section 827(a)(1)(K) authorizes “members of children’s multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor” to **inspect, but not receive copies of**, information in a child welfare file. (Welf. & Inst. Code, § 827(a)(1)(K) & (5).)
- If parts of the child welfare file are protected by other confidentiality and privilege laws, the child welfare agency may allow inspection of those parts, absent a court order, if the team or team member is “entitled to access [the information] under the other state law or federal law or regulation without a court order...” (Welf. & Inst. Code, § 827(a)(3)(A); see Cal. Rules Court 5.552(h). )
- Section 827 does not define “multidisciplinary team” for this purpose, nor does it prescribe any requirements for member qualifications or how many individuals or agencies constitute a team.

#### 2. Welfare and Institutions Code Section 18951 Multidisciplinary Personnel Teams (18951 MDTs)

- Section 830 authorizes a child welfare agency to disclose and exchange information and writings from the child welfare agency’s file with members of an *18951 multidisciplinary personnel team* (or *18951 MDT*, for short) engaged in the prevention, identification, management or treatment of child abuse or neglect, as long as the child welfare agency reasonably believes the information is generally relevant to the prevention, identification, management, or treatment of child abuse, or to the provision of child welfare services. (Welf. & Inst. Code, § 830(a); see also Welf. & Inst. Code, § 18951.)
- An 18951 MDT—so named for the Welfare and Institutions Code section that sets out the guidelines for this type of multidisciplinary personnel team—is “any team of **three or**

**more persons** who are trained in the prevention, identification, management, or treatment of child abuse or neglect cases and who are qualified to provide a broad range of services related to child abuse or neglect.” This may include certain mental health, medical, and education professionals, as well as teachers and child welfare social workers, among others. (Welf. & Inst. Code, § 18951(d), emphasis added.)

- Members of the 18951 MDT may share information “designated as *confidential* under state law” with other members of the team. (Welf. & Inst. Code, § 830, emphasis added.)
- Exceptions in some state confidentiality laws also allow for disclosure of information to an 18951 MDT. For example, Welfare and Institutions Code section 10850 protects the confidentiality of some information in the child welfare file but allows a child welfare agency to disclose and exchange this information with members of an 18951 MDT engaged in the prevention, identification, management, or treatment of child abuse or neglect, because the team activities are “activities performed in the administration of public social services.” (Welf. & Inst. Code, § 10850.1.) Similarly, LPS allows protected mental health information and records to be disclosed between persons who are trained and qualified to serve on 18951 MDTs. However, there are restrictions on further dissemination of information subject to LPS. (Welf. & Inst. Code, § 5328(l); see also Welf. & Inst. Code, § 18964.)
- Although federal HIPAA, CAAPTR, and FERPA regulations do not directly authorize disclosures to multidisciplinary teams, such information may be shared where the disclosure complies with the applicable statute. (See Welf. & Inst. Code, § 827(a)(3).) For example, CAAPTR allows disclosure of protected information related to substance abuse treatment on showing of a signed authorization. A child welfare agency may disclose CAAPTR-protected substance abuse treatment information to members of a multidisciplinary personnel team if the agency has an authorization allowing that disclosure.
- “All discussions relative to the disclosure or exchange of any such information or writings during team meetings are confidential unless disclosure is required by law.” (Welf. & Inst. Code, §§ 830(a), 10850.1(a).)
- “*Child welfare services*,” “*multidisciplinary personnel team*” and “*child abuse*” are specifically defined for these purposes by statute. (Welf. & Inst. Code, §§ 830(b), 10850.1(b), 18951.) Also note that an *18951 multidisciplinary personnel team* is different from an *18961.7 multidisciplinary team*, as explained in the next section.

### **3. Welfare and Institutions Code Section 18961.7 Multidisciplinary Teams (18961.7 MDTs)**

- Section 18961.7 authorizes child welfare agencies’ team members to release information in the child welfare agency file to members of an *18961.7 multidisciplinary team* (18961.7 MDT) “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 the disclosure occurs within “a 30-day period, or longer if documented good cause exists, following a report of suspected child abuse or neglect.” (Welf. & Inst. Code, § 18961.7(c)(1).)

- An 18961.7 MDT, again named for the guiding code section, is “any team of **two or more persons** who are trained in the prevention, identification, or treatment of child abuse and neglect cases and who are qualified to provide a broad range of services related to child abuse.” This may include certain mental health and medical professionals, specified education professionals, teachers, child welfare workers and law enforcement, among others, as well as certain designates for particular cases. (Welf. & Inst. Code, § 18961.7(b)(1), emphasis added.)
- An 18961.7 MDT serves a specific purpose. As described in the statute, “[a] county may establish a child abuse multidisciplinary personnel team within that county to allow provider agencies to share confidential information in order for provider agencies to investigate reports of suspected child abuse or neglect made pursuant to Section 11160, 11166, or 11166.05 of the Penal Code, or for the purpose of child welfare agencies making a detention determination.” (Welf. & Inst. Code, § 18961.7(a).)
- To this end, the statute authorizes child welfare agency personnel who are members of an 18961.7 MDT to disclose and exchange “information and writings that relate to any incident of child abuse ... 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” (Welf. & Inst. Code, § 18961.7(c)(1)) with the following restrictions:
- Information can be exchanged with and within an 18961.7 MDT only during the 30-day period following a report of suspected child abuse or neglect, or longer if documented good cause exists. (Welf. & Inst. Code, § 18961.7(c)(1).)
- Information can be disclosed and exchanged between members of the 18961.7 MDT *only* if the team member in possession of such information or writing reasonably believes it to be generally relevant to the prevention, identification, or treatment of child abuse. (Welf. & Inst. Code, § 18961.7(c)(1).)
- A number of protections restrict 18961.7 MDT members from further disclosing information. (Welf. & Inst. Code, § 18961.7(f)–(h).)
- “The sharing of information permitted under [section 18961.7(c)] shall be governed by protocols developed in each county describing how and what information may be shared by the child abuse multidisciplinary team to ensure that confidential information gathered by the team is not disclosed in violation of state or federal law. A copy of the protocols shall be distributed to each participating agency and to persons in those agencies who participate in the child abuse multidisciplinary team.” (Welf. & Inst. Code, § 18961.7(e).)

- It is unclear whether a child welfare agency may share information protected by other state confidentiality laws with an 18961.7 MDT absent a specific exception in the pertinent law. Section 18961.7(c)(1) says “[n]otwithstanding ... any other provision of law, ... members of a child abuse multidisciplinary personnel team ... may disclose to and exchange with one another information and writings that relate to any incident of child abuse that may also be designated as confidential under state law ....” However, section 18961.7(g) says, “[t]his section shall not be construed to restrict guarantees of confidentiality provided under state or federal law.” Further guidance would be helpful.
- Although federal HIPAA, CAAPTR, and FERPA regulations do not directly authorize disclosures to multidisciplinary teams, such information sharing may occur when a disclosure complies with the applicable statute. (See Welf. & Inst. Code, § 827(a)(3)). For example, CAAPTR allows disclosure of protected substance abuse treatment information with a signed authorization. A child welfare agency may disclose substance abuse treatment information protected by CAAPTR to members of a multidisciplinary personnel team if the agency has an authorization allowing that disclosure.
- Section 18961.7—and the authority of multidisciplinary teams established under it—will remain in effect only until January 1, 2014. (Welf. & Inst. Code, § 18961.7(i).)

## Sharing Information on Children in Foster Care: Child Welfare Agency Files

### Appendix A

#### WHO CAN INSPECT AND RECEIVE COPIES OF INFORMATION IN A CHILD WELFARE FILE UNDER WELFARE AND INSTITUTIONS CODE SECTION 827?

Section 827(a) of the Welfare and Institutions Code sets out the following rules that govern who is permitted access to information in juvenile case files:

#### 3. Individuals and entities authorized to *inspect and receive copies of juvenile case files*

- “The State Department of Social Services, to carry out its duties ... to oversee and monitor county child welfare agencies, children in foster care or receiving foster-care assistance, and out-of-state placements.” (Welf. & Inst. Code, § 827(a)(1)(I) & (5).)
- “Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.” (Welf. & Inst. Code, § 827(a)(1)(H) & (5).)
- “Court personnel.” (Welf. & Inst. Code, § 827(a)(1)(A), (E) & (5).)
- “The attorneys for the parties ... who are actively participating in criminal or juvenile proceedings involving the minor.” (Welf. & Inst. Code, § 827(a)(1)(A), (E) & (5); a parent’s attorney in a criminal matter also has access, but only to those records made available to the district attorney (*Lorenza P. v. Superior Court* (1988) 197 Cal.App.3d 607 [242 Cal.Rptr.877, 878]).)
- “[J]udges, referees, and other hearing officers ... who are actively participating in criminal or juvenile proceedings involving the minor.” (Welf. & Inst. Code, § 827(a)(1)(A), (E) & (5).)
- “[P]robation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.” (Welf. & Inst. Code, § 827(a)(1)(E) & (5).)
- “The minor who is the subject of the proceeding.” (Welf. & Inst. Code, § 827(a)(1)(C,D) & (5).)
- “The minor’s parents or guardian.” (Welf. & Inst. Code, § 827(a)(1)(C), (D) & (5).) This does not include stepparents who do not have custody (*In re Tiffany G.* (1994) 29 Cal.App.4th 443 [35 Cal.Rptr.2d 8]) or de facto parents (*In re B.F.* (2010) 190 Cal.App. 4th 811 [118 Cal.Rptr. 3d 561, 566].)
- “The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law” as well as the “county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action.” (Welf. & Inst. Code, § 827(a)(1)(B), (F) & (5).)

- “persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe.” (Welf. & Inst. Code, § 827(f).<sup>5</sup>)

#### **4. Individuals and entities authorized only to *inspect* juvenile case files**

- “[A] judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, and the following persons, if actively participating in the family law case: a family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code, a court-appointed evaluator or a person conducting a court-connected child custody evaluation, investigation, or assessment pursuant to Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code.” (Welf. & Inst. Code, § 827(a)(1)(L) & (5).)

The access granted under this subsection should be compared to the access granted under section 827.10 of the Welfare and Institutions Code, discussed on page 5 of the brief, which permits the child welfare agency in its discretion to release copies of information in its file to designated family law and probate court participants.

- “The superintendent or designee of the school district where the minor is enrolled or attending school.” (Welf. & Inst. Code, § 827(a)(1)(G) & (5).)
- “Members of children’s multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor.” (Welf. & Inst. Code, § 827(a)(1)(K) & (5).)

The access granted to teams under this section should be compared to the access granted under the statutes discussed on page 6 of this briefing and in Appendix C, which permit the child welfare agency at its discretion to release information to specified types of multidisciplinary teams.

- “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

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<sup>5</sup> Effective as of 1/1/15

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 may 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 may not contain the name of the minor.” (Welf. & Inst. Code, § 827(a)(1)(J) & (5).)

- “A court-appointed investigator who is actively participating in a guardianship case involving a minor pursuant to Part 2 (commencing with Section 1500) of Division 4 of the Probate Code and acting within the scope of his or her duties in that case.” (Welf. & Inst. Code, § 827(a)(1)(M) & (5).)
- “A local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders.” (Welf. & Inst. Code, § 827(a)(1)(N) & (5).)
- “Juvenile justice commissions as established under Section 225. The confidentiality provisions of Section 10850 shall apply to a juvenile justice commission and its members.” (Welf. & Inst. Code, § 827(a)(1)(O) & (5).)
- Any other person who may be designated by court order of the judge of the juvenile court in response to the filing of a petition. (Welf. & Inst. Code, § 827(a)(1)(P) & (5).)

## Appendix B

### OTHER CONFIDENTIALITY AND PRIVILEGE LAWS

Several federal and state statutes protect the confidentiality and privilege of certain sensitive information, including health, mental health, substance abuse, and education information. When such information is held in a child welfare agency file, these confidentiality and privilege laws may apply to control whether, when, how, and to whom the child welfare agency can disclose that information. As a result, an agency or individual authorized under section 827 to inspect or receive copies of a child welfare agency file may nevertheless be restricted from access to certain information in that file. Depending on the situation, confidentiality and privilege statutes may protect both information obtained by the child welfare agency from third parties and that generated by the child welfare agency itself. The following list of federal and state confidentiality and privilege statutes is for illustrative purposes only and is by no means exhaustive. Some of the descriptions include examples to illustrate how the statute might apply to limit or allow the release of information in a child welfare file.

#### Federal Laws

- **The Health Insurance Portability and Accountability Act (HIPAA)—Privacy Rule** (45 C.F.R. §§ 160, 164)

HIPAA protects the confidentiality of medical and mental health information held by “covered entities.” Covered entities include health care providers who transmit health information in electronic form, health plans, and health care clearinghouses. (45 C.F.R. § 160.103.) Generally, only covered entities and their “business associates” must comply with HIPAA’s confidentiality provisions. Therefore, health information in child welfare agency files is subject to HIPAA *only* if the child welfare agency qualifies as a covered entity or received the protected information while acting as the business associate of a covered entity under a “business associate” contract. (It is extremely unusual for a child welfare agency to qualify as a covered entity or to receive information about a foster youth while acting as the business associate of a covered entity—but should the situation ever arise, medical information in the child welfare file would be subject to HIPAA restrictions on disclosure.)

*See the AOC briefing “Sharing Information about Children in Foster Care: Health Care Information” for more on HIPAA.*

- **The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act (CAAPTR)** (42 U.S.C. § 290dd-2; 42 C.F.R. § 2)

CAAPTR restricts the disclosure and use of patient identifying information about individuals in substance abuse treatment. CAAPTR regulations apply only when treatment was provided by certain agencies. However, third-party recipients of information from these agencies must also comply with CAAPTR regulations. (See 42 C.F.R. § 2.32.) For example, if a county child welfare agency obtains substance abuse treatment records from a CAAPTR provider, the

information remains subject to CAAPTR, and the child welfare agency can only share that information subject to CAAPTR restrictions on disclosure. Release of CAAPTR-protected information typically requires a specialized court order or the written consent of the patient authorizing the treatment provider to disclose the protected information to a third party. California Health and Safety Code section 11845.5 (see below) also protects certain substance abuse treatment records and requires written authorization for their disclosure.

*Example: A child welfare agency file may contain the substance abuse treatment records of a foster youth. The youth has a general right to inspect and receive copies of information in her own child welfare file pursuant to section 827. If the agency and its counsel determine that the substance abuse treatment information in the file is subject to CAAPTR, however, the agency must also comply with CAAPTR requirements governing that information's release. The youth is entitled under CAAPTR to review her own treatment records, so the agency must allow her to inspect or receive copies of that information from her file. On the other hand, if the file also contains substance abuse treatment information on one of her parents and that information is subject to CAAPTR, the agency cannot provide that particular information to the minor without either a CAAPTR-compliant authorization release signed by that parent or a CAAPTR-compliant court order.*

*See the AOC briefing "Sharing Information about Children in Foster Care: Substance Abuse Treatment Information" for more on CAAPTR and its restrictions on disclosure.*

- **The Family Educational Rights and Privacy Act (FERPA)** (20 U.S.C. § 1232g; 34 C.F.R. § 99)

FERPA protects the confidentiality of education records held by certain educational agencies and institutions. Educational agencies subject to FERPA are generally only authorized to release education records to a third-party recipient such as a child welfare agency when the recipient will not further disclose the information to any other party without the consent of the parent or eligible student. (34 C.F.R. § 99.33(a).) Educational agencies and institutions may release information to a third-party recipient knowing that the recipient will make further disclosures of the information, however, if the further disclosures will be made only to parties who are authorized to receive educational information without prior consent under 34 Code of Federal Regulations part 99.31 (2010). (34 C.F.R. § 99.33(b).)

### California Laws

- **The Confidentiality of Medical Information Act (CMIA)** (Civil Code, § 56 et seq.)

CMIA protects the confidentiality of health and mental health information held by health care providers, health plans and health care contractors and limits their latitude to disclose that information. (Civ. Code, § 56.10.) Once protected information is disclosed by a health care provider to a third-party recipient such as a child welfare agency, CMIA limits and controls the recipient's ability to release that information *in some cases*, depending in part on how the recipient obtained the information. (Civ. Code, § 56.13.)

For example, CMIA allows a health care provider to disclose protected health information to a third party bearing a consent form signed by the patient that authorizes such disclosure—but CMIA also prohibits the third-party recipient from disclosing that information to any other party except in accordance with a new authorization or as required or permitted by other provisions of CMIA or by law. (Civ. Code, § 56.13.)

CMIA does not limit a third-party recipient from releasing protected information in every case, though. For example, CMIA does not prohibit a third-party recipient of health information from further disclosing that information if the recipient obtained the information with a court order. (See Civ. Code, § 56.13.) There are other examples.

Thus, depending in part on how the child welfare agency obtained the information, health and mental health information in the child welfare file may or may not be subject to CMIA restrictions on disclosure.

*Example: The physician of a 15-year-old dependent releases information about her pregnancy to a social worker who holds a CMIA-compliant authorization signed by the youth. The social worker places the pregnancy information in the youth's child welfare agency file. The biological mother of the youth later requests a copy of the file, which a parent has the general right to inspect and receive copies of under Welfare and Institutions Code section 827. However, the welfare agency must also comply with CMIA restrictions on the release of protected health information. CMIA does not allow the agency to release the pregnancy information to the parent unless the parent first obtains the authorization of the youth or goes through a legal process such as obtaining a court order for access to the information.*

*See the AOC briefing "Sharing Information About Children in Foster Care: Health Care Information" for more on CMIA.*

- **The Lanterman-Petris-Short Act (LPS)** (Welf. & Inst. Code, § 5328 et seq.)

LPS protects the confidentiality of information and records that result from provision of certain types of mental health services, as described in Welfare and Institutions Code section 5328. LPS limits how that information can be used and redisclosed by a provider as well as by a third-party recipient. For example, if a county social worker obtains health information protected by LPS pursuant to a court order, further disclosure of this information is governed by LPS. (Welf. & Inst. Code, §§ 5328, 5328.04.) Exceptions in LPS do allow for some disclosure. For example, LPS allows protected mental health information and records to be disclosed between persons who are trained and qualified to serve on 18951 MDTs. However, there are restrictions on further dissemination of information subject to LPS. (Welf. & Inst. Code, § 5328(l); see also Welf. & Inst. Code, § 18964.)

*See the AOC briefing "Sharing Information about Children in Foster Care: Mental Health Care Information" for more on LPS.*

- **Evidence Code—evidentiary privilege** (Evid. Code, §§ 990 et seq., 1010 et seq.)

*Evidentiary privilege* restricts the use and disclosure of “confidential communications” as evidence in court. Confidential communications as defined in the code include communications between a patient and a doctor or therapist made in a confidential setting.

Privileged confidential communications cannot be disclosed in court testimony, court reports, or documents attached to or submitted with a court report unless the patient has waived the privilege. (Evid. Code, §§ 990 et seq., 1010 et seq.) In dependency cases, a child 12 years of age or older is presumed mature enough to waive privilege on his or her own behalf; otherwise, privilege can only be waived by the child’s attorney. Neither the court, the child welfare agency, a health care provider, nor a parent may waive privilege for a dependent child. (Welf. & Inst. Code, § 317(f).) Disclosure of confidential communications by a health care provider to a third party does not automatically waive privilege. Thus, a child welfare agency file may contain information that is no longer protected by confidentiality law but remains protected by privilege. When asked to disclose privileged communications for a court proceeding, the holder of privilege, a person “authorized” by the holder, and the health care provider are all authorized, and in some cases required, to claim privilege on behalf of a patient. (Evid. Code, §§ 994–995, 1014–1015.) There are outstanding questions regarding how the child welfare agency should proceed in such cases and whether, for example, the child welfare agency has a duty to assert privilege or inform the privilege holder so that privilege can be asserted.

There are some situations in which privilege never attaches to what are otherwise confidential communications. (See, e.g., Evid. Code, §§ 1017, 1024.) There is also case law establishing that information protected by privilege can sometimes be used, in a circumscribed way, as evidence in dependency proceedings. (See, e.g., *In re Kristine W.*, 94 Cal.App.4th 521 (2001); *In re Mark L.*, 94 Cal.App.4th 573 (2001); but see also *In re Karen P.*, 200 Cal.App.4th 908 (2011).)

*Example:* A social worker obtains mental health information about a dependent child through exceptions in CMIA and LPS that allow release of protected mental health information to a social worker for care coordination purposes. (See exceptions in Civ. Code, §§ 56.10(c), 56.103; Welf. & Inst. Code, § 5328.04.) These exceptions allow a therapist to disclose information to the social worker for care coordination purposes, but this disclosure does not waive evidentiary privilege because neither the therapist nor the social worker has authority to waive the child’s privilege. The social worker places this information in the child welfare file. The social worker is asked to include this information in a report that will be submitted as evidence to the juvenile court, but the information is still protected by evidentiary privilege and cannot be included without first addressing the privilege issue.

- **Education Code section 49075** requires that authorized recipients of school records obtained with parental consent be notified that “transmission of the information to others without the written consent of the parent is prohibited.”

- **Health and Safety Code section 11845.5** protects certain substance abuse treatment records and controls redisclosure by third-party recipients.
- **Penal Code section 11167.5** makes certain child abuse reports and investigative reports confidential and strictly limits to whom they may be disclosed. The child welfare agency must abide by these restrictions on disclosure even where an individual or entity otherwise has authorization to inspect or obtain copies of records under Welfare and Institutions Code section 827. (See Welf. & Inst. Code, § 827(A)(3)(a); Cal. Rules Court 5.552(h).)
- **Child fatality restrictions:** The California Department of Social Services (CDSS), in the section of its Manual of Policies and Procedures (MPP) entitled “Child Fatality Reporting and Disclosure Requirements,” notes that counties “must adhere to all laws that govern confidentiality of the release of information” and lists a number of examples of state laws that may limit release of information from a child welfare file that is otherwise being disclosed regarding a child fatality. (CDSS *Child Welfare Services Manual*, § 31-502.451.)

## Appendix C

### ADDITIONAL INFORMATION ABOUT MULTIDISCIPLINARY TEAMS

Many counties have established multidisciplinary teams or have ongoing meetings that are multidisciplinary in scope, such as citizen review panels, team decision meetings, and permanency team meetings. There are ongoing questions about how much information a child welfare agency can provide to these groups without a court order. Several California statutes authorize a child welfare agency to disclose information to team members in specific multidisciplinary contexts. To the extent that a county team or meeting panel satisfies the pertinent statutory definition of a multidisciplinary team, child welfare agencies may provide information to team members as prescribed under the applicable statute. This appendix gives three examples of multidisciplinary teams permitted to receive confidential information from child welfare agencies and the statutes that authorize the disclosure (all section numbers refer to the Welfare and Institutions Code unless stated otherwise).

#### 1. Children’s Multidisciplinary Teams

- Section 827(a)(1)(K) authorizes “members of children’s multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor” to **inspect, but not receive copies of**, information in a child welfare file. (Welf. & Inst. Code, § 827(a)(1)(K) & (5).)
- If parts of the child welfare file are protected by other confidentiality and privilege laws, the child welfare agency may allow inspection of those parts, absent a court order, if the team or team member is “entitled to access [the information] under the other state law or federal law or regulation without a court order...” (Welf. & Inst. Code, § 827(a)(3)(A); see Cal. Rules Court 5.552(h). )
- Section 827 does not define “multidisciplinary team” for this purpose, nor does it prescribe any requirements for member qualifications or how many individuals or agencies constitute a team.

#### 2. Welfare and Institutions Code Section 18951 Multidisciplinary Personnel Teams (18951 MDTs)

- Section 830 authorizes a child welfare agency to disclose and exchange information and writings from the child welfare agency’s file with members of an *18951 multidisciplinary personnel team* (or *18951 MDT*, for short) engaged in the prevention, identification, management or treatment of child abuse or neglect, as long as the child welfare agency reasonably believes the information is generally relevant to the prevention, identification, management, or treatment of child abuse, or to the provision of child welfare services. (Welf. & Inst. Code, § 830(a); see also Welf. & Inst. Code, § 18951.)
- An 18951 MDT—so named for the Welfare and Institutions Code section that sets out the guidelines for this type of multidisciplinary personnel team—is “any team of **three or**

**more persons** who are trained in the prevention, identification, management, or treatment of child abuse or neglect cases and who are qualified to provide a broad range of services related to child abuse or neglect.” This may include certain mental health, medical, and education professionals, as well as teachers and child welfare social workers, among others. (Welf. & Inst. Code, § 18951(d), emphasis added.)

- Members of the 18951 MDT may share information “designated as *confidential* under state law” with other members of the team. (Welf. & Inst. Code, § 830, emphasis added.)
- Exceptions in some state confidentiality laws also allow for disclosure of information to an 18951 MDT. For example, Welfare and Institutions Code section 10850 protects the confidentiality of some information in the child welfare file but allows a child welfare agency to disclose and exchange this information with members of an 18951 MDT engaged in the prevention, identification, management, or treatment of child abuse or neglect, because the team activities are “activities performed in the administration of public social services.” (Welf. & Inst. Code, § 10850.1.) Similarly, LPS allows protected mental health information and records to be disclosed between persons who are trained and qualified to serve on 18951 MDTs. However, there are restrictions on further dissemination of information subject to LPS. (Welf. & Inst. Code, § 5328(l); see also Welf. & Inst. Code, § 18964.)
- Although federal HIPAA, CAAPTR, and FERPA regulations do not directly authorize disclosures to multidisciplinary teams, such information may be shared where the disclosure complies with the applicable statute. (See Welf. & Inst. Code, § 827(a)(3).) For example, CAAPTR allows disclosure of protected information related to substance abuse treatment on showing of a signed authorization. A child welfare agency may disclose CAAPTR-protected substance abuse treatment information to members of a multidisciplinary personnel team if the agency has an authorization allowing that disclosure.
- “All discussions relative to the disclosure or exchange of any such information or writings during team meetings are confidential unless disclosure is required by law.” (Welf. & Inst. Code, §§ 830(a), 10850.1(a).)
- “*Child welfare services*,” “*multidisciplinary personnel team*” and “*child abuse*” are specifically defined for these purposes by statute. (Welf. & Inst. Code, §§ 830(b), 10850.1(b), 18951.) Also note that an *18951 multidisciplinary personnel team* is different from an *18961.7 multidisciplinary team*, as explained in the next section.

### **3. Welfare and Institutions Code Section 18961.7 Multidisciplinary Teams (18961.7 MDTs)**

- Section 18961.7 authorizes child welfare agencies’ team members to release information in the child welfare agency file to members of an *18961.7 multidisciplinary team* (18961.7 MDT) “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 the disclosure occurs within “a 30-day period, or longer if documented good cause exists, following a report of suspected child abuse or neglect.” (Welf. & Inst. Code, § 18961.7(c)(1).)

- An 18961.7 MDT, again named for the guiding code section, is “any team of **two or more persons** who are trained in the prevention, identification, or treatment of child abuse and neglect cases and who are qualified to provide a broad range of services related to child abuse.” This may include certain mental health and medical professionals, specified education professionals, teachers, child welfare workers and law enforcement, among others, as well as certain designates for particular cases. (Welf. & Inst. Code, § 18961.7(b)(1), emphasis added.)
- An 18961.7 MDT serves a specific purpose. As described in the statute, “[a] county may establish a child abuse multidisciplinary personnel team within that county to allow provider agencies to share confidential information in order for provider agencies to investigate reports of suspected child abuse or neglect made pursuant to Section 11160, 11166, or 11166.05 of the Penal Code, or for the purpose of child welfare agencies making a detention determination.” (Welf. & Inst. Code, § 18961.7(a).)
- To this end, the statute authorizes child welfare agency personnel who are members of an 18961.7 MDT to disclose and exchange “information and writings that relate to any incident of child abuse ... 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” (Welf. & Inst. Code, § 18961.7(c)(1)) with the following restrictions:
- Information can be exchanged with and within an 18961.7 MDT only during the 30-day period following a report of suspected child abuse or neglect, or longer if documented good cause exists. (Welf. & Inst. Code, § 18961.7(c)(1).)
- Information can be disclosed and exchanged between members of the 18961.7 MDT *only* if the team member in possession of such information or writing reasonably believes it to be generally relevant to the prevention, identification, or treatment of child abuse. (Welf. & Inst. Code, § 18961.7(c)(1).)
- A number of protections restrict 18961.7 MDT members from further disclosing information. (Welf. & Inst. Code, § 18961.7(f)–(h).)
- “The sharing of information permitted under [section 18961.7(c)] shall be governed by protocols developed in each county describing how and what information may be shared by the child abuse multidisciplinary team to ensure that confidential information gathered by the team is not disclosed in violation of state or federal law. A copy of the protocols shall be distributed to each participating agency and to persons in those agencies who participate in the child abuse multidisciplinary team.” (Welf. & Inst. Code, § 18961.7(e).)

- It is unclear whether a child welfare agency may share information protected by other state confidentiality laws with an 18961.7 MDT absent a specific exception in the pertinent law. Section 18961.7(c)(1) says “[n]otwithstanding ... any other provision of law, ... members of a child abuse multidisciplinary personnel team ... may disclose to and exchange with one another information and writings that relate to any incident of child abuse that may also be designated as confidential under state law ....” However, section 18961.7(g) says, “[t]his section shall not be construed to restrict guarantees of confidentiality provided under state or federal law.” Further guidance would be helpful.
- Although federal HIPAA, CAAPTR, and FERPA regulations do not directly authorize disclosures to multidisciplinary teams, such information sharing may occur when a disclosure complies with the applicable statute. (See Welf. & Inst. Code, § 827(a)(3)). For example, CAAPTR allows disclosure of protected substance abuse treatment information with a signed authorization. A child welfare agency may disclose substance abuse treatment information protected by CAAPTR to members of a multidisciplinary personnel team if the agency has an authorization allowing that disclosure.
- Section 18961.7—and the authority of multidisciplinary teams established under it—will remain in effect only until January 1, 2014. (Welf. & Inst. Code, § 18961.7(i).)



## Sharing Information About Children in Foster Care

Five briefing papers addressing confidentiality and  
information sharing about children in foster care

- Health Care Information
- Mental Health Care Information
- Substance Abuse Treatment Information
- Education Information
- Child Welfare Agency Files



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