
ORANGE COUNTY SOCIAL SERVICES AGENCY CFS OPERATIONS MANUAL

Effective Date: October 6, 2003
Revised: April 16, 2008

Number: I-0404

Acquisition of Health Care Information

Purpose	To provide guidelines for acquiring protected health information from Health Insurance Portability and Accountability Act (HIPAA) covered entities as it relates to Children and Family Services (CFS) clients.
Approved	This policy was approved by Mike Ryan, Director of CFS, on April 16, 2008. <i>Signature on file.</i>
Background	<p>This policy and procedure (P&P) is a revision of CFS P&P Health Insurance Portability and Accountability Act (HIPAA): Guidelines for Children and Family Services (I-0404) and incorporates and renders obsolete CFS P&Ps Health Insurance Portability and Accountability Act (HIPAA) (I-0401-D) and Medical Records Release (C-0102).</p> <p>One subsection of HIPAA, passed by Congress in 1996, addressed the confidentiality of individual health information to include both privacy concerns surrounding an individual's health care information and security concerns regarding the transmission and storage of a person's health care information. This subsection of the HIPAA designated the organization performing this function as a covered entity and the individual operations that provide direct care, management of direct care, and storage/transmission of health care information as health care components. The subsection classified an organization with divisions or programs that were unrelated to health care as non-health care components. In these situations, the total organization was designated a hybrid entity with both covered and non-covered components.</p>

The County of Orange is a hybrid organization with both covered health care components (Health Care Agency) and non-covered components (Social Service Agency/CFS). Individual health care information under the HIPAA is referred to as **protected health information (PHI)**. The impact of the final HIPAA rule, which went into effect on April 21, 2003, was to restrict access to PHI and to impose security requirements on its storage and electronic transmission.

Dependent children can be extensive consumers of health care services from such professionals as doctors, dentists, psychologists, therapists, and other allied health care providers. The child's use of services can generate extensive PHI. Social workers require access to this information in order to oversee the treatment needs of the child and to fulfill their responsibilities in reporting the health and safety of the dependent child to the Juvenile Court. Additionally, social workers in various capacities may require access to the health care records of biological parents, caretakers, and other individuals involved in some aspect of the dependency process.

The state of California implemented the federal HIPAA regulations in Civil Code Section 56. This implementation was incomplete, as the state code was silent on the social worker relationship to the dependent child thus creating confusion amongst covered entities as to the social worker's right to PHI. Health & Safety Code Section 123105(e) does not include a social worker that works for a public or private agency in the list of persons who meet the definition of a **Personal Health Representative** and thus entitled to authorize the release of PHI.

The California Legislature recognized that the social worker's lack of authorization to receive PHI on a dependent child impeded their ability to manage and report on the health care needs of the child. Responding to this situation, the legislature passed and the governor signed Assembly Bill (AB) 1687 into law on October 12, 2007, which amended Civil Code Section 56.10 to authorize a social worker to receive health care information on a dependent child from covered entities. This legislation became effective January 1, 2008.

Legal Mandates

- [California Civil Code Section 56.10-56.16](#)
- [United States Code of Federal Regulations \(CFR\) Title 45, Part 160](#)
- [United States CFR Title 45, Part 164](#)

- [Penal Code Section 11167 \(a\)\(b\)](#)
 - [California Family Code Sections 6922 and 6924-6929](#)
 - [California Health and Safety Code Section 123105\(e\)](#)
 - [California Civil Code Section 56.05](#)
 - [United States CFR Title 42, Part 2](#)
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Definitions

Covered entity means: (1) Health plan, (2) Health care clearinghouse, or (3) Health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

Disclosure means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information.

Health care means care, services, or supplies related to the health of an individual. Health care includes, but is not limited to, the following: (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and (2) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

Medical Information means any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient's medical history, mental or physical condition, or treatment. "Individually identifiable" means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual's identity.

Minor means a child taken into temporary custody or as to whom a petition has been filed with the court, or who has been adjudged to be a dependent child or ward of the juvenile court pursuant to Section 300 or Section 600 of the Welfare and Institutions Code.

Protected health information means individually identifiable health information that is: (1) Transmitted by electronic media; (2) Maintained in electronic media; or (3) Transmitted or maintained in any other form or medium. Protected health information does not include the material outlined below as exclusions.

Protected health information excludes individually identifiable health information in: (1) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; (2) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and (3) Employment records held by a covered entity in its role as employer.

Required by law means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

Psychotherapy notes means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session, and that are separated from the rest of the individual's medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

Treatment means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.

POLICY

Personal Representative	<p>Prior to a child being the subject of a child abuse investigation or being declared a dependent of the court, the parent is the personal representative of the child and is authorized to sign for release of records to a third party or to receive the records themselves. There are instances described below where the child has the statutory authority to consent to treatment and the release of PHI pertaining to that treatment.</p> <p>The individual authorized to release PHI is determined by whose information is being sought, the juvenile court case status, the age of the child and their capacity to consent for treatment, and the specific type of information being sought. Additionally, the form to be used and which additional documents are required can vary depending on the organization that the documents are being requested from. The sections below detail who is authorized to sign for the release of PHI at each stage of the dependency process.</p>
Child Abuse Being Investigated	<p>Prior to a child being adjudicated a dependent of the Juvenile Court, the assigned social worker is not entitled to any PHI unrelated to a child abuse investigation. The social worker does not require parental or the child's authorization to acquire PHI related to abuse being investigated. Any PHI requested outside the scope of the investigation would require parental authorization or the child's authorization that fit the circumstances permitted by California law.</p> <p>California Family Code Sections 6920–6929 describe the limited circumstances when a child can consent to treatment and is authorized to release their own PHI.</p> <ul style="list-style-type: none">A. The minor is 15 years or older and may consent to medical treatment subject to certain conditions.B. The minor may consent to mental health treatment at age 12 years subject to certain restrictions.C. A minor may consent to medical treatment related to the prevention or treatment of pregnancy. Sterilization or abortion are either prohibited or come with restrictions.

- D. A minor, 12 years or older, may consent to the treatment of infectious, contagious, or communicable diseases.
- E. A minor, 12 years or older, may consent to medical care related to the diagnosis or treatment of rape.
- F. A minor may consent to medical treatment for sexual assault. A parental notification clause is included in this statute.
- G. A minor, 12 years or older, may consent to medical care and counseling related to the diagnosis or treatment of a drug or alcohol related problem. If treatment was initiated by the parents/guardians, with or without the consent of the minor, the parents/guardians are authorized to release treatment records with or without the consent of the minor.

In the case of parental absence or parental refusal to authorize release of PHI not related to the allegations of abuse and prior to dependency status, a Court order is required to release the documents.

Medical information related to the diagnosis and treatment of a mental health condition may be disclosed to the social worker if the health care provider determines that it is reasonably necessary for the coordination of treatment and care of the minor. In this instance, medical information does not include psychotherapy notes.

**Child
Adjudicated a
Dependent—
Parental Rights
Intact**

At the time that a child is adjudicated a dependent, the Juvenile Court authorizes CFS to consent to routine medical, dental and mental health treatment of a non-invasive nature. The Court retains the authority to consent to all psychotherapeutic medications, absent parent concurrence, and receive all records pertaining to those medications. Refer to CFS P&P Psychotropic Medication: Dependent Child (I-0306).

With the amendment of California Civil Code Section 56.10, effective January 1, 2008, the social worker is authorized to receive medical information for the purpose of coordinating health care services and medical treatment for the children in their care and custody.

Parental Rights Suspended, Guardianship Granted— Dependent or Non-Dependent Child	For a guardianship where dependency has been terminated, the guardian would be the personal representative for the child and, therefore, authorized to sign the required release of information. When dependency has been continued after the guardianship has been granted, or in situations where dependency has been reinstated at the request of the guardian, the social worker would be authorized to consent to the release of PHI for the child. The exception would be treatment that the child consented to, in which case only the child could authorize the release of information.
Parental Rights Terminated— Dependent Child	If the Court terminates the rights of the parents, the social worker is authorized to consent to release medical, dental, and mental health records without further authorization of the Court. The exception to this would be a situation where the child provided consent for treatment and, therefore, the child's consent would be needed for the release of records.
Special Case Scenarios	<p>A. <u>Parental Records Sought:</u> Whenever records regarding a parents' medical, dental, or psychological treatment are sought, their authorization or authorization of a designated personal representative is required.</p> <p>B. <u>Relative/NREFM, Foster Parent, or Other Adults:</u> As with birth parents, authorization from relatives, non-relative extended family members (NREFM), foster parents, and other adults or their personal representatives is required prior to the release of their PHI.</p>
Other Disclosures Where State or Federal Laws Preempt HIPAA	<p>A. <u>Drug and Alcohol Records:</u> Drug and alcohol treatment records receive separate protection under federal law. The use of a separate authorization from that used for PHI is required.</p> <p>B. <u>Therapy Notes:</u> Psychotherapy notes require a separate authorization that differs from that used to acquire PHI. This reflects the recognition that psychotherapy notes have the potential to negatively impact the therapist client relationship if misinterpreted.</p> <p>C. <u>Human Immunodeficiency Virus (HIV):</u> The results of a child's HIV test or status requires authorization by the parent, by a child age 12 years or older, or by order of the Juvenile Court. A separate authorization is required for each disclosure. Case management issues</p>

involving HIV are discussed in more detail in CFS P&P HIV/AIDS Case Management (D-0602).

Re-Disclosure of PHI	<p>Health care records included in the child's dependency case file are subject to the confidentiality requirements of California law and addressed in CFS P&P Confidentiality SSA Records (F-0105). The policy on confidentiality serves to prevent accidental disclosure of sensitive information regarding the child.</p> <p>The implementation of AB 1687 on January 1, 2008 restricts the disclosure by the social worker of previously acquired PHI. Re-disclosure of PHI is only authorized for the purpose of coordinating health care services and medical treatment provided to the minor and for disclosures authorized by law.</p> <p>Several exceptions exist. In the case of a public agency adoption program, California Family Code Section 8706 requires full disclosure of all medical information regarding the adoptee and their biological parent(s) at the time of an adoptive placement. AB1687 supports this full disclosure of health care information when it states, "The disclosure of information pursuant to this section is not intended to limit the disclosure of information when that disclosure is otherwise required by law."</p> <p>In regards to psychotherapy notes, there is no prohibition against re-disclosure by non-covered entities.</p> <p>Drug and alcohol records require additional reauthorization by the patient prior to re-disclosure.</p> <p>Re-disclosure of HIV records requires an additional authorization.</p>
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REFERENCES

Hyperlinks	Users accessing this document by computer may create a direct connection to the following references by clicking on them.
	<ul style="list-style-type: none">• CFS P&P Psychotropic Medication: Dependent Child (I-0306)• CFS P&P HIV/AIDS Case Management (D-0602)• CFS P&P Confidentiality-SSA Records (F-0105)

Other Sources None.

REQUIRED FORMS

Online Forms Required forms listed below may be printed out and completed, or completed online, and may be accessed by clicking on the link provided.

Form Name	Form Number
<u>Authorization for Release of Medical Records</u>	F063-25-287
<u>Psychosocial and Medical History of Child</u>	AD512

Hard Copy Forms Required forms listed below must be completed in hard copy (including multi-copy NCR forms) and obtained in the CFS forms rooms. ***For reference purposes only***, links are provided to view these hard copy forms, where available.

Form Name	Form Number
<u>HCA Authorization To Use or Disclose Protected Health Information</u>	F346-531 B
<u>Authorization to Use and Disclose Protected Health Information</u>	F063-28-343

CWS/CMS Forms The following required forms may **only** be obtained in CWS/CMS. ***For reference purposes only***, links are provided to view these CWS/CMS forms, where available.

Form Name	Form Number
None.	

Brochures Brochures that should be distributed in conjunction with this procedure include:

Brochure Name	Brochure Number
None.	

PROCEDURE

Required Actions— PHI Related To Child Abuse Investigation	The following actions must be completed when requesting PHI related to a child abuse investigation .
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<u>Staff Responsible</u>	<u>Step</u>	<u>Required Action</u>
Assigned Social Worker (ASW)	<ol style="list-style-type: none">1. ASW is authorized to sign for release of PHI related to a child abuse investigation.2. State purposes as "investigation of child abuse."3. <ol style="list-style-type: none">a. For PHI at HCA, use <i>HCA Authorization To Use or Disclose Protected Health Information, form F346-531B</i>.b. For all other organizations, use <i>Authorization To Use or Disclose Protected Health Information, form F063-28-343</i>.4. If child has been detained, attach a copy of Detention minute order showing temporary custody status. Redact information as to parents or child abuse allegations.5. File copy of release on <i>Medical Acco Insert, Form F063-25-1115</i>.	

Required Actions— PHI Related To Non-Dependent Child	The following actions must be completed when requesting PHI related to a non-dependent child .
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<u>Staff Responsible</u>	<u>Step</u>	<u>Required Action</u>
ASW	<ol style="list-style-type: none">1. Parent or child's personal representative is the only individual authorized to sign a release of information for PHI unrelated to child abuse.2. If PHI relates to treatment that child consented to, child's authorization is required.	

3. Forms used would remain the same as if the PHI related to child abuse.
 4. File copy of authorized release on the *Medical Acco Insert*.
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Required Actions— PHI Related To a Dependent Child	The following actions must be completed when requesting PHI related to a dependent child .	
Staff Responsible	Step	Required Action
ASW	<ol style="list-style-type: none"> 1. ASW is authorized to receive PHI related to child's health care. 2. State purpose as "coordination of health care services." 3. a. For PHI at HCA, use <i>HCA Authorization To Use or Disclose Protected Health Information</i>. b. For all other organizations, use <i>Authorization To Use or Disclose Protected Health Information</i>. 4. Attach a copy of the dispositional minute order declaring dependency to authorization form. Redact information related to parents or the child abuse allegations. 5. File copy of signed release on the <i>Medical Acco Insert</i>. 	

Required Actions— PHI Related To A Dependent Child After Termination of Parental Rights	The following actions must be completed when requesting PHI related to a dependent child after termination of parental rights .	
Staff Responsible	Step	Required Action
ASW	<ol style="list-style-type: none"> 1. ASW is authorized to receive PHI related to child's health care. 2. For purpose, on form state "coordination of health care services." 	

3.
 - a. For PHI at HCA, use *HCA Authorization To Use or Disclose Protected Health Information*.
 - b. For all other organizations, use *Authorization To Use or Disclose Protected Health Information*.
4. For children whose permanent plan is adoption, use *Authorization to Release Medical Records, Form F063-25-287*, when requesting birth medicals. For purpose, state "full disclosure."
5. Attach a copy of the minute order showing termination of parental rights. Redact parent's names and any information related to child abuse allegation.
6. File copy of signed release on the *Medical Acco Insert*.

Required Actions— The following actions must be completed when requesting PHI related to an adult.

<u>Staff Responsible</u>	<u>Step</u>	<u>Required Action</u>
ASW	<ol style="list-style-type: none">1. Obtain signed authorization from adult or their personal representative.2. <ol style="list-style-type: none">a. For PHI at HCA, use <i>HCA Authorization To Use or Disclose Protected Health Information</i>.b. For all other organizations, use <i>Authorization To Use or Disclose Protected Health Information</i>.3. File a copy of signed authorization on the <i>Service/Miscellaneous Acco Insert, Form F063-25-1114</i>.	

Required Actions— PHI Related To Drug/Alcohol Abuse Records	The following actions must be completed when requesting PHI related to drug and alcohol abuse records for an Adult .	
<u>Staff Responsible</u>	<u>Step</u>	<u>Required Action</u>
ASW	<ol style="list-style-type: none"> 1. Obtain signed authorization from adult. 2. Use <i>Authorization To Use or Disclose Protected Health Information</i> for all organizations. 3. File a copy of signed authorization on the <i>Service/Miscellaneous Acco Insert</i>. 	

Required Actions— PHI Related To Psychotherapy Notes	The following actions must be completed when requesting PHI related to psychotherapy notes for minors or adults .	
<u>Staff Responsible</u>	<u>Step</u>	<u>Required Action</u>
ASW	<ol style="list-style-type: none"> 1. Request must be in writing and include: <ol style="list-style-type: none"> a. Specific information relating to a patient's participation in outpatient treatment with a psychotherapist being requested and its specific intended use or uses. b. Length of time during which the information will be kept before being disposed of or destroyed. A person or entity may extend that timeframe, provided that person or entity notifies the provider, plan, or contractor of the extension. Any notification of an extension shall include specific reason(s) for the extension, intended use or uses of the information during the extended time, and the expected date of destruction of the information. c. A statement that the information will not be used for any purpose other than its intended use. d. A statement that the person or entity requesting the information will destroy the information and all 	

copies in the person's or entity's possession or control, will cause it to be destroyed, or will return the information and all copies of it before or immediately after the length of time specified in paragraph (b) has expired.

2.
 - a. For psychotherapy notes at HCA, use *HCA Authorization To Use or Disclose Protected Health Information*.
 - b. For all other organizations, use *Authorization To Use or Disclose Protected Health Information*.
3. Copy of authorization for the child should be filed on the *Medical Acco Insert*. For adults, copy of authorization should be filed on the *Service/Miscellaneous Acco Insert*.