AOC Briefing

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SHARING INFORMATION ABOUT CHILDREN IN FOSTER CARE

Substance Abuse Treatment Information

A summary of issues faced by child welfare agencies, juvenile courts, and substance abuse treatment providers

ADMINISTRATIVE OFFICE OF THE COURTS

CENTER FOR FAMILIES, CHILDREN & THE COURTS

AOC Briefing

Judicial Council of California
Administrative Office of the Courts
Center for Families, Children & the Courts
455 Golden Gate Avenue
San Francisco, California 94102-3688
cfcc@jud.ca.gov
www.courts.ca.gov

Prepared by the AOC Center for Families, Children & the Courts (CFCC)

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Carolynn Bernabe
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INTRODUCTION

Children in foster care are frequently victims of abuse and neglect owing, in part, to the substance abuse of one or both parents. Children may enter the foster care system at birth because they are born to mothers who used alcohol or drugs during pregnancy, and some children in care will have difficulty maintaining placements because of additional challenges such as Fetal Alcohol Spectrum Disorder (FASD). Information about the parent's progress in treatment and with continuing monitoring as well as an evaluation of his or her ability to provide a safe home environment are necessary before child welfare agencies can recommend, and a court can order, that a child return home. For children in foster care who themselves have substance use problems, the child welfare agency and the juvenile court need information about treatment to ensure that these children receive appropriate and effective services.

Removing unnecessary barriers to sharing substance abuse information for the coordination of health care 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. To assist in the discussion about removing barriers to information sharing, the Administrative Office of the Courts has prepared this overview. It is not intended to be an exhaustive analysis of all legal issues related to sharing substance abuse information concerning children in foster care and their parents; it is intended to provide a basis for further discussions about identifying and removing legal barriers that prevent child welfare services, juvenile courts, and substance abuse providers from obtaining all the information they need to make informed decisions for children in foster care.

This brief addresses disclosure of substance abuse information held by substance abuse providers. It does not address disclosure of substance abuse records held in court or child welfare agency files.

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

- Children continue to receive the care that they need when they are removed from their homes, and services are identified as they become necessary.
- Child welfare agencies and the juvenile court can determine when parents have made satisfactory progress in their treatment programs and agree to continued monitoring. This may be the best indicator that a child may be safely returned home with the assistance of supportive monitoring.
- Child welfare agencies and the juvenile court can make sure that children in foster care with drug and alcohol problems are receiving appropriate treatment.
- Child welfare agencies and the juvenile court can monitor the health and well-being outcomes of children under their jurisdiction.

State and federal law creates privacy protections for parents and children in foster care who receive treatment services for their substance use problems.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) applies to substance abuse treatment providers.

- Treatment providers are generally subject to HIPAA. Please see the AOC Briefing on health care information for a summary of HIPAA requirements.

The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act (CAAAPTR) authorizes confidentiality of substance abuse treatment records.

- The CAAAPTR Act restricts the disclosure and use of patient identifying information about individuals in substances abuse treatment. (42 U.S.C. § 200dd-2.)
- Treatment records include the identity, diagnosis, prognosis, or treatment of any patient that are maintained in connection with the performance of any program or activity related to substance abuse education, prevention, training, treatment, rehabilitation, or research that is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States. (42 U.S.C. § 290dd-2; 42 C.F.R. § 2.12(b) (2009).)
- Direct and indirect assistance by any department or agency of the United States is broadly defined as the receipt of any federal funding from any department or agency of the United States, including funds that are not used for substance abuse programs; the receipt of any license, certification, registration, or other authorization granted by any department or agency of the United States; and assistance from the IRS through the granting of tax-exempt status. (42 C.F.R. § 2.12(b) (2009).)
- The CAAAPTR Act applies to treatment or rehabilitation programs, employee assistance programs, programs within general hospitals, school-based programs, and private practitioners who provide substance abuse diagnosis, treatment, or referral to treatment. (42 C.F.R. § 2.12 (2009).)

- The purpose of the CAAAPTR regulations is to ensure that a patient in an applicable federally assisted program is not made more vulnerable by reason of the availability of his or her patient record than an individual who has an alcohol or drug problem and does not seek treatment. (42 C.F.R. § 2.3(b)(2) (2009).) This encourages patients to seek treatment for substance abuse problems without fear that their privacy will be compromised. (*Mosier v. American Home Patient, Inc.* (N.D. Fla. 2001) 170 F.Supp.2d 1211.)
- The prohibition against disclosure does not apply to the reporting of suspected child maltreatment and neglect to the appropriate authorities. However, the restrictions on disclosure continue to apply to the original substance abuse patient records maintained by a treatment program, including their disclosure or use in civil and criminal proceedings that may arise out of the report of suspected child maltreatment and neglect. (42 C.F.R. §§ 2.1(e), 2.2(e), 2.12(c)(6) (2009).)
- When CAAAPTR and state law conflict, the law that best protects confidentiality applies. (42 C.F.R. § 2.20 (2009).)

California law provides for confidentiality of substance abuse treatment records.

- California law protects the identity and records of the identity, diagnosis, prognosis, or treatment of any patient maintained in connection with the performance of any substance abuse treatment or prevention effort or function conducted, regulated, or directly or indirectly assisted by the department. (Health & Saf. Code, § 11845.5.) Each county's board of supervisors designates a health related county agency or department to administer county alcohol and other drug programs. (Health & Saf. Code, § 11800.)

Under federal and state law, substance abuse treatment information can be released to the child welfare agency and the juvenile court if the patient consents or a court issues an order.

- Under CAAAPTR, records may be released with the patient's consent, but only to the extent, under the circumstances, and for the purposes clearly stated in the release of information signed by the patient. (42 C.F.R. §§ 2.1(b)(1), 2.2(b)(1) (2009).)
- To be valid, the authorization must include the core elements required by CAAAPTR, HIPAA, and state law. (See 42 C.F.R. § 2.31 (2009).)
- If the patient is a minor, CAAAPTR states that the minor must give written consent for the release. Both the minor and the minor's parent provide written consent if state law requires parental consent for the minor's treatment. The minor alone provides consent if state law allows the minor to consent to his or her own treatment. (42 C.F.R. § 2.14 (2009).)
- Records may also be released if the release is authorized by an appropriate order of a court granted after application and a showing of good cause. The application must provide to the patient and the person holding the records notice of the opportunity to object and of the availability of a private hearing in chambers. To find good cause, the court must find that other ways of obtaining the information are not available or will not be effective and that the public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship, and the treatment services. The court order must limit disclosure to those parts of the records essential to fulfill the order's objective and to those persons who need the information, and must limit further disclosure for protection of the patient, patient-physician relationship, and the treatment services. (42 U.S.C. § 290-dd-2(b)(2)(C); 42 C.F.R. §§ 2.1(b)(2)(C); 2.2(b)(2)(C), 2.64 (2009).)

CONCLUSION

State and federal law create important privacy protections for people who participate in drug and alcohol treatment programs. However, it is critical that child welfare agencies and the courts receive information about parents' and children's substance abuse treatment, recovery, monitoring, and continuing sobriety in order to make informed decisions about a child's placement.

Fortunately, child welfare agencies and the courts can obtain substance abuse treatment information when there is either a patient's written consent or a court order. Although these exceptions to the general right of privacy give child welfare agencies and the courts a way to receive the information they need to make critical decisions about foster children, the need for consent or a court order presents practical obstacles to designing an automated exchange of information between substance abuse treatment providers, child welfare agencies, and the courts.

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SHARING INFORMATION ABOUT CHILDREN IN FOSTER CARE

Four 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

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