

Confidentiality of Mental Health Records/Information

The purpose of this publication is to tell you about your legal rights regarding the confidentiality of your mental health records.

Generally, if you receive mental health services under the Lanterman-Petris-Short Act (you are involuntarily or voluntarily treated in a state hospital, state developmental center, county psychiatric hospital, private institution, hospital, or clinic, or receive services under a community mental health treatment program), all information about the services you receive is confidential and cannot be released without your authorization. However, there are situations when your records can be released without your authorization. This publication discusses some of these situations. However, this publication only provides basic legal information. Confidentiality of records is a complex area of law. Contact one of the numbers at the bottom of this publication or an attorney for information about your specific questions or situation.

A. What does keeping records confidential mean?

Whether you are or were a voluntary or involuntary patient, your mental health records are confidential. This means all information obtained in the course of your mental health services or treatment is not to be shared by anyone, except in the situations listed below.

B. If you give authorization, records and/or information about your mental health care may be released in the following situations:

1. When you designate that your records be shared with others. The doctor, psychologist, social worker, or licensed marriage and family therapist in charge of your care must approve. Professional staff cannot be forced to reveal information that was given to them in confidence by members of your family. Cal. Welf. & Inst. Code §5328(b).
2. In communication between a qualified professional person (a staff person at a facility) to another professional (outside the facility) who does not have responsibility for your care. Cal. Welf. & Inst. Code §5328(a).
3. To your attorney, except for information given in confidence to professional persons and staff by members of your family. Cal. Welf. & Inst. Code §5328(j).
4. To a county patients' rights advocate providing services to you. Cal. Welf. & Inst. Code §5541.

5. To an insurer if you apply for life or disability insurance. Cal. Welf. & Inst. Code §5328(i).
6. A 24 hour facility must make reasonable efforts to notify your designated family member(s) or another person of your admission. Unless you ask that this information not be provided. Upon request, the facility must also give to your designated family member(s) or another person information about your diagnosis, prognosis, medications, progress, release, transfer, serious illness, or death. But only after telling you such information has been requested and only if you authorize the release. Specific rules apply if you are unable to give authorization. Also, the facility must tell you of your right to keep this information confidential. Cal. Welf. & Inst. Code §5328.1.
7. If you have been convicted of a crime, information may be released to the probation officer who is evaluating you. But only if the facility you were in thinks the information is relevant, and only if you agree in writing. The information can be released only until you have been sentenced for the crime. After that, it must be kept confidential. The information released must be kept separate from your probation report. Also, information given in confidence by your family members must be kept confidential. Cal. Welf. & Inst. Code §5328(k).
8. To a government law enforcement agency investigating a crime if the records relate to you and you are confined under certain penal commitment categories. Cal. Welf. & Inst. Code §5328.01.
9. To a qualified physician or psychiatrist representing an employer when the information is required for an employment application. Unless the person responsible for your care thinks the release would not be in your best interest. Cal. Welf. & Inst. Code §5328.9.
10. To you or your authorized representative if you are appealing a benefits decision.
11. Between county agencies if you are an older adult and in the opinion of a multidisciplinary team there are signs of elder abuse/neglect. The disclosure must not include information about treatment or services provided. Welf. & Inst. Code §5328.05.
12. To a qualified professional who is providing genetic counseling to you or a member of your family. Cal. Welf. & Inst. Code §5328(q).

C. Without your authorization, information about your mental health care (only what is minimally necessary) may be released in the following situations:

1. If you are a minor, ward, or conservatee and your parent, guardian, guardian ad litem, or conservator consents in writing. However, professional persons and staff cannot be forced to reveal information that was given to them in confidence by members of your family. Cal. Welf. & Inst. Code §5328(d).
2. A requesting family member may be told of your presence in a facility if you are unable to authorize such a release of information (unless prohibited by federal law). Cal. Welf. & Inst. Code §5328.1.
3. Information may be released to prevent, investigate, or treat child, elder, and dependent adult abuse. Disorders involving lapses of consciousness may also be released. Only required, relevant information may be released. Full access to your records is not authorized. Cal. Welf. & Inst. Code §5328.5. Cal. Penal Code §11165-11174. Cal. Health & Safety Code §103900. 17 C.C.R. §2810. See also 65 Ops. Cal. Atty. Gen. 345 (1982); People v. Stritzinger, 34 Cal. 3d 505 (1983).
4. Between people on a “multidisciplinary personnel” team if the information is relevant to the prevention, identification, management, or treatment of an abused child or his or her parents, an abused elder, or abused dependent adult. Cal. Welf. & Inst. Code §5328(l). Cal. Welf. & Inst. Code §5328(v).
5. When your psychotherapist thinks you are a serious danger of violence to a reasonably foreseeable victim(s), information may be released to the possible victim(s) and to law enforcement. Cal. Welf. & Inst. Code §5328(r).
6. Information about denial of rights (but not your identity) must be released to your conservator or guardian, the local mental health director, the state legislature, the Office of Patient’s Rights, or county patient’s rights advocates if they request it. Cal. Welf. & Inst. Code §5326.1.
7. Under certain circumstances, information must be released to Disability Rights California for the protection and advocacy of the rights of individuals identified as mentally ill. Cal. Welf. & Inst. Code §5328.06.
8. In the course of conservatorship proceedings. Cal. Welf. & Inst. Code §5328(a).
9. Treatment facilities must release your information to county officers if the release will help a conservatorship investigation. Cal. Welf. & Inst. Code §5354.

10. Under limited circumstances, if you are released from a 72 hour hold (5150) or a 14 day treatment hold (5250) and a request has been made for notification of your release by law enforcement who placed you on the hold. Cal. Welf. & Inst. Code §5328(p).
11. In some circumstances, limited information must be released to law enforcement if you are an involuntary patient or under a penal code commitment in a facility and are being moved, are under criminal investigation, or escaped from the hospital. Cal. Welf. & Inst. Code §5328.2, 5328.3, 5328.01, 7325.5. See also Cal. Penal Code §4536(b), 1370.5(b).
12. If you are an involuntary patient and “gravely disabled,” information may be released if you disappear from your facility or are transferred between state hospitals. Cal. Welf. & Inst. Code §5328.3, 7325.
13. In communications between qualified professionals regarding services or appropriate referrals if the professionals work in the same facility or have responsibility for your care. Cal. Welf. & Inst. Code §5328(a).
14. When a law enforcement officer personally lodges an arrest warrant showing you are wanted for a serious or violent felony, the facility must inform the officer if you are in the facility. Cal. Welf. & Inst. Code §5328(u).
15. Information may be released to law enforcement if you are a “mentally disordered or developmentally disabled person” and someone believes you are a crime victim. Cal. Welf. & Inst. Code §5004.5.
16. To a government law enforcement agency if your facility or physician has probable cause to believe that you have committed, or have been the victim of, a crime while hospitalized. Release depends on the level of the crime involved. It must be limited to the facts of the crime. It must not relate to your mental state, admission, commitment, or treatment. Cal. Welf. & Inst. Code §5328.4.
17. Certain inpatient facilities must provide you and your legal representative (or other person you designate) aftercare plan information when you are discharged from the facility. Cal. Health & Safety Code §1262; Cal. Welf. & Inst. Code §5622, 5768.5.
18. To process a claim for aid, insurance, or medical assistance, but only to the extent necessary. Cal. Welf. & Inst. Code §5328(c).
19. To the courts, as necessary for the administration of justice. Cal. Welf. & Inst. Code §5328(f).
20. To the Youth Authority and Adult Correctional Agency as necessary for the administration of justice. Cal. Welf. & Inst. Code §5328.02.

21. To law enforcement agencies to protect federal and state elective constitutional officers and their families. Cal. Welf. & Inst. Code §5328(g).
22. To the Senate or Assembly Rules Committees for legislative investigation. Cal. Welf. & Inst. Code §5328(h).
23. To a quality assurance committee established in compliance with Cal. Welf. & Inst. Code §4070 and 5624. Cal. Welf. & Inst. Code §5328(n).
24. To a licensing board for mental health professionals when the Department of Mental Health reasonably believes a licensing violation has occurred. The records must be relevant. They cannot include your name and must be sealed after the board makes a decision. Cal. Welf. & Inst. Code §5328.15(b).
25. For research, if the Director of Mental Health sets rules for the research and it is reviewed by the appropriate board. Researchers must first try to get your informed consent. Also, they must agree not to release your information to unauthorized persons and must keep your identity private in publishing research findings. Cal. Welf. & Inst. Code §5328(e).
26. To licensing personnel (with the Department of Health Services or the Department of Social Services) regarding licensing and inspection of facilities. The information can be used in certain hearings and judicial proceedings. The information can only be released to the parties and must be kept private when the matter is over. Cal. Welf. & Inst. Code §5328.15(a).
27. To the Director of Mental Health for statistical data. Cal. Welf. & Inst. Code §5329.
28. Information about your treatment must be released to the coroner if you die in a state hospital. The information should be kept private and not made public. It should not include information about your personal life. Cal. Welf. & Inst. Code §5328.8.
29. To a domestic violence death review team. Cal. Pen. Code §11163.3(g)(1)(B).
30. To an elder death review team. Cal. Pen. Code §11174.8.
31. To the “designated officer” of an “emergency response employee” (see the Ryan White Comprehensive AIDS Resources Emergency Act of 1990) or from the designated officer to an emergency response employee, regarding possible exposure to HIV or AIDS. But only if necessary to comply with the Ryan White Act. Cal. Welf. & Inst. Code §5328(t).
32. To the Secretary of Health and Human Services when required to determine compliance with the Health Insurance Portability and Accountability Act (HIPAA). 45 C.F.R. 164.502(a)(2).

D. What does written consent or authorization mean?

Generally, there must be a form signed by you (or your parent, guardian, or conservator) each time information is released. It must be written in plain language. It must include: the specific information to be released, the name of the agency or individual to whom information may be released, the name of the agency or person authorized to release, the purpose, and a valid expiration date. Also, there must be statements, among others, that tell you about your right to revoke the authorization and your right to a copy of the authorization. You should receive a copy of the form. It needs to be kept in your medical record.

E. Are there separate requirements for releasing psychotherapy notes?

Yes. With some exceptions, psychotherapy notes can only be released if you specifically authorize it in a separate form.

F. If information is released, what does the facility have to do?

The facility must make a written entry in your medical record, with the date and circumstances that they provided the information, the names and relationships to you of the person or agency that received the information, and the information provided. A copy must be given to you. Cal. Welf. & Inst. Code §5328.6.

G. What can you do legally if someone releases your confidential information in violation of the law?

You may bring a civil action against a person who willfully and knowingly releases your confidential information. The penalty is \$10,000 or three times your actual damages, whichever is greater. You may also bring a civil action against a person who negligently releases your confidential information. The penalty for that is \$1,000 and the amount of your actual damages. Finally, you may bring an action to stop someone from releasing your information. In all cases, you may be entitled to your court costs and reasonable attorney's fees. Cal. Welf. & Inst. Code §5330.

You may also file a complaint under HIPAA. A provider may be fined \$100 for each violation and up to \$25,000 for repeated, identical violations in one year. Some exceptions apply. Also, a person may be punished criminally for knowing violations. Criminal liability may be from \$50,000 and one year of imprisonment to \$250,000 and ten years of imprisonment, depending on the violation.

Note: there is no liability for damages for information released under Cal. Welf. & Inst. Code §5328.1 (see paragraphs B(6) and C(2) above).

Questions?

If you have any questions, contact your county Patients' Rights Advocate, or call:

Disability Rights California Toll Free (800) 776-5746

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100 Howe Avenue, Suite 185N
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