



## Legal Issues Related to Therapy and Evaluations for Child Welfare Services Cases

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### **CWS Psychological/Psychiatric Evaluations**

A TERM evaluator conducts an evaluation when the PSW determines that such an evaluation is necessary based on legal requirements or clinical need to facilitate provision of appropriate intervention services to the client for addressing the protective issues. The information documented in the evaluation report is gained through a comprehensive clinical interview, review of existing records, and typically collateral interviews. Psychological evaluations also typically include administration of formal assessment instruments. The PSW submits a request for an evaluation to TERM that includes the specific reason for the referral and the issues to be addressed by the evaluator. The evaluator is asked to answer all of the questions posed and to make appropriate treatment recommendations that address the protective issues.

#### *Consent for Treatment and Authorization to Use or Disclose Protected Health Information*

##### *Voluntary Services or Pre-Jurisdiction Cases*

No court order is issued for an evaluation in voluntary services cases or before the Court takes jurisdiction in a dependency case. Pursuant to Superior Court of California, County of San Diego Rules of Court: Rule 6.6.10, CWS is allowed to share certain information from its files regarding children and families who are receiving voluntary services from HHSA. The information that can be released includes health care, mental health services, educational services, and social services including San Diego Regional Center or wraparound services provided to the child and/or family. This information may be shared only with individuals/organizations providing these services. The information can only be exchanged when it is necessary to better serve the needs of the child and/or family and must be kept confidential. The parent provides the Consent For Treatment and is the holder of the privilege for the release of information from the evaluator back to CWS for themselves and their children.

If the client is a parent, the parent should sign a Consent For Treatment and an Authorization To Use or Disclose Protected Health Information provided by the evaluator prior to, or at the time of, the evaluation appointment. The Authorization To Use or Disclose Protected Health Information should allow the evaluator to give both verbal and written feedback to CWS as an agency, not just to the referring PSW.

If the client is a child, the parent should sign a Consent For Treatment and an Authorization To Use or Disclose Protected Health Information provided by the evaluator prior to, or at the time of, the evaluation appointment that allows the evaluator to give both verbal and written feedback to CWS as an agency, not just to the referring PSW.

Parents often request a copy of their evaluation from either the evaluator or the PSW. Evaluators and therapists should notify the PSW of the client's request so the PSW can determine whether the client simply wants a session with the evaluator to discuss the results. Child Welfare Services will pay the evaluator the equivalent of one therapy session to use as a feedback session if the parent requests feedback and the evaluator agrees to provide it. If the PSW determines that the parent actually wants a copy of the evaluation and not a just a session with the evaluator, then the PSW should refer the parent back to his/her attorney. This language regarding the attorney would not apply in cases which are strictly voluntary with no court involvement.



### *Court (Family Maintenance or Reunification) Cases*

Typically, the PSW asks the Court to order the psychological evaluation. The psychological evaluation does not fall under the psychotherapist/client privilege because there is no expectation of privacy when it is Court ordered.

The PSW will provide a copy of the Authorization To Use or Disclose Protected Health Information to the evaluator along with the background information regarding the case. When the client is an adult, CWS will forward a signed copy of this document, if it is available, along with the background records prior to the evaluation date. If the client is a child, the PSW will forward a copy of the Authorization To Use or Disclose Protected Health Information signed by either the parent or the Court.

The evaluation report with original signature should be faxed to TERM for review, who then will forward the evaluation to the PSW. The PSW sends the evaluation to court under cover indicating "Confidential." It is the policy of the San Diego Juvenile Dependency Court that copies of the evaluation should not be given to parents or children. Parents' attorneys can also arrange for private independent evaluations of their clients. No court order is issued for such requests and such evaluations are not "TERM Evaluations".

Because the request comes directly from the attorney representing the client, the evaluation is considered attorney-work-product and is confidential from all other parties, including TERM. The results and the report should be given directly to the attorney. There should be no discussion regarding the evaluation with the PSW unless the parent's attorney authorizes it. If the client wants a copy of the evaluation, he/she should discuss this with his/her attorney.

### *Adoption Cases*

A psychological evaluation is required by State regulation to finalize an adoption of a child age 6 years or older. No court order is necessary. The evaluation report should be given directly to TERM for review, who will forward the report to the PSW.

### **Therapy in CWS Cases**

A TERM therapist may be requested to make a clinical assessment and diagnosis of the client (CPT code 90801) and then provide treatment. The treatment should address the CWS protective issues and related psychosocial functioning. The therapist is asked to provide information via the Initial Treatment Plan and Treatment Plan Update forms, regardless of the source of payment for services. If the client is a parent, the treatment and documented progress should target the protective issues and specific risk factors related to child abuse as outlined by CWS and as identified in therapy. If the client is a child, the Plan and Update forms should document the child's progress in ameliorating emotion/ cognitive dysregulation and behavioral concerns secondary to abuse and neglect. Progress should be measured by objective behavioral changes. Therapists should refrain from giving recommendations regarding placement and visitation, which are the responsibilities of the PSW. The therapist must accept as facts of the case the Court's "True Finding", the case plan, and the Court Orders in Juvenile Court cases. Prior to initiation of services, the PSW will provide the Therapy Referral Form and case background records. The therapist is requested to obtain all the case/payment information from the PSW.



*Consent For Treatment and Authorization To Use or Disclose Protected Health Information.*

*Voluntary Services or Pre-Jurisdiction Cases*

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Parents provide the consent for treatment for themselves and their children. They also are the holder of the privilege for themselves and their children. The parents should sign the Consent For Treatment and Authorization To Use or Disclose Protected Health Information forms provided by the therapist at the initiation of services.

*Dependency Court Cases*

Once the Court takes jurisdiction and makes a True Finding, parents and children are Court-ordered into services. Child Welfare Services will forward to the provider the Consent to Treat and Authorization To Use or Disclose Protected Health Information for the child. These will be signed by either the parent or the Court. When the client is the parent, Child Welfare Services will forward to the provider the Authorization To Use or Disclose Protected Health Information signed by the parent. However, the provider is encouraged to have the parent sign the provider's Consent For Treatment and Authorization To Use or Disclose Protected Health Information forms at the initiation of services to clarify again the limitations of confidentiality, the reporting requirements of the provider, and any other specific rules (e.g., client pays for 'no shows') that the provider might have.