Legislative Update- 2018

CalQIC Annual Conference
Monterey, California

Friday, March 16, 2018
9:30 a.m. - 12 noon

-------------------

Linda Garrett, JD
Garrett Consulting Group, LLC
linda@garrettconsulting.com
Desk: 415-924-4980
Cell: 415-320-4470
Agenda

- New Laws
  - Training and Licensure
  - Administrative Issues; Access to Records; Employment Issues
  - Mandated Reporting
  - Drug Prescribing
  - Mental Health
- Confidentiality
- Ethical Issues going forward
New Laws – Eff. 1/1/18 (unless otherwise noted)

Training and Licensure

**AB 89** Board of Psychology – Eff. 1/1/20. New applicants need a minimum of six (6) hours of coursework or applied experience under supervision in **suicide risk assessment and intervention**

→*renewal applicants* renewing on or after **1/1/20** must meet the same (one-time only) requirement (B&P Code 2915.4)

**AB 1229** Board of Vocational Nursing and Psychiatric Technicians. **Extends Board’s authority to license and regulate vocational nurses and psychiatric technicians** until 1/1/21 (3 year extension)
Training & Licensure - continued

**AB 1188** Adds LPCCs and APCCs to list of licensed mental health providers eligible for grants to reimburse educational loans

**AB 658** Bureau of State Audits found that CDPH inappropriately raised fees on clinical laboratory licenses and has amassed a surplus in excess of $22 million. This bill **suspends** the annual renewal fee for these licenses for the calendar years 2018 and 2019 to reduce the surplus to “appropriate levels.”
AB 191  Adds licensed Marriage and Family Therapists (MFTs) and Licensed Professional Clinical Counselors (LPCCs) to list of professionals authorized to be the second signer on a notice of certification for patients needing additional involuntary treatment (+14 days if DTS, DTO, GD; +14 days if suicidal; +30 days GD)

- **First signer:** “professional in charge of facility”
- **Second signer:** “a physician or a psychologist who participated in evaluation and finding”
  - If professional person in charge = the physician or psychologist who did evaluation, then the second signer can be:
  - MFT, LCSW, LPCC, or RN who participated in the evaluation
SB 554 Nurse Practitioners and Physician Assistants -
Prohibits interpretation of Nurse Practice Act or Physician Assistant Practice Act from prohibiting an NP or PA from ordering or furnishing buprenorphine* to a patient when done in compliance with the federal Comprehensive Addiction Recovery Act. (B&P 2836.4; 3502.1.5)

*Buprenorphine can be prescribed or dispensed in physicians’ offices (unlike methadone treatment) and is part of MAT (medication-assisted treatment). SAMSHA notes that FDA has approved the following products containing buprenorphine and naloxone (blocks withdrawal symptoms): Bunavail (buccal film), Suboxone (film), Zubsolv (sublingual tablets); see also slide 11 below.
Training & Licensure - continued

AB 508 Repeals Business and Professions Code 685, a law that authorized professional boards to deny a license, or cite and fine a practitioner who is in default on a US DHHS education loan.

AB 1340 Requires MBC to “consider” including in CE requirements a course in integrating mental and physical health care in primary care settings, especially as it pertains to early identification of mental health issues and exposure to trauma in children and young adults. (B&P 2191.5)
Training & Licensure - continued

**SB 799** Raises threshold to $10,000 for medical malpractice insurance reports to BRN of any settlement or arbitration award concerning an RN (used to be $3,000).

Also requires BRN to study and report to legislature by 1/1/19 the extent to which employers voluntarily report disciplined nurses and **provide options for reasonable reporting mechanisms** that will lead to consistent reporting by employers (B&P 801, 2701, 2708, 2761.5 et al.)
Training & Licensure - continued

**SB 449** Requires at least two of the 60 hours of classroom training required as part of an approved training program for Certified Nursing Assistants to address the special needs of persons with Alzheimer’s disease and related dementias. (H&S 1337.1)
Facility and Administrative Issues

AB 1732 (Passed 2016, Effective 3/1/17) Places of public accommodation (including hospitals and clinics) must use gender-neutral signage for single user restroom facilities.
Facility and Administrative Issues –cont.

SB 219  **Enacts LGBT Long-Term-Care Facility Residents’ Bill of Rights** and makes it unlawful for LTC to discriminate, make room assignments, fail to use preferred name or pronoun, or deny or restrict care based upon a person’s actual or perceived HIV status or sexual orientation (heart), gender identity (brain), gender expression (appearance) or sex (parts).
Facility and Administrative Issues - continued

- Transgender patients and clients

  - If you know one transgender person you know one transgender person; everyone is unique – not necessary to “understand” a person to accept, respect, and help the person

  - *Parts, Paperwork, and Presentation are no indication of a person's Pronoun Preference*
    -- Rev. Emma Chattin
Facility and Administrative Issues - continued

**SB 179 (Effective 9/1/18)** Provides for third gender option on driver’s licenses, ID cards and birth certificates (female, male, nonbinary); also restructures process for name change to conform with gender identity.
Employment Issues

**SB 396** Requires employers to include training on harassment based on gender identity, gender expression, and sexual orientation as part of mandatory bi-annual sexual harassment training.
Facility - Access by ICE Agents Prohibited Without Warrant

AB 450 Prohibits public and private employers from voluntarily providing ICE agents access to any non-public areas of a “place of labor” (including a health clinic or hospital) unless the agent has a warrant (federal law permits ICE agents to enter if they have consent of the owner or other person in control of the site).

- Also prohibits an employer from voluntarily permitting ICE agents to access, review or obtain employee records without a subpoena or court order (arguably not only applies to employment-related inquiries but also to patient-related inquiries). Employers must continue to comply with federal laws such as responding to Notice of Inspection of I-9 Employment Eligibility Verification forms and other documents.
Patient Access to Records

**SB 241** Access to Medical Records

- Aligns state law with HIPAA re: access and how much patients can be charged for copies of their records (not to exceed cost).

- Removes sections of CA law that used to permit providers to prepare a summary in lieu of the actual record, and sections that used to allow mental health providers to shield mental health records if they thought it would cause emotional harm or harm to the therapeutic relationship.

- Also explicitly lets mental health providers subject to LPS rules (W&I 5328) disclose PHI to their Business Associates, and to use PHI for internal operations purposes. (H&S 123105; 123110)
Mandated Reporting

**AB 1312** Sexual Assault Victims’ Rights

- Requires law enforcement authority or DA to notify a sexual assault victim of *right to have person of any gender* present during any interview with authorities
- Requires *emergency contraception* be provided to victim for free
- Requires law enforcement to develop and provide, and for medical personnel to provide if available, a *card with info on rights of sexual assault victims*
Mandated Reporting - continued

**AB 575** – expands the definition of health practitioner for the purpose of the mandated elder and dependent adult abuse reporter law to include **SUD counselors**; defines SUD counselor as a person providing counseling in an SUD program.
She says she’s fine but she’s going insane.

She says she feels good but she’s in a lot of pain.

She says it’s nothing but it’s really a lot.

She says she’s okay but really she’s not.
Drug Prescribing

**AB 40** – CURES database to be made available electronically through online portals or health information technology systems already being used by emergency department physicians; still waiting for DOJ certification that will trigger requirement that CURES be checked prior to prescribing

- **SB 482 (1-1-17)** *(eff. 6 months after CURES database is certified ready to use by DOJ)* - all prescribers (except Veterinarians) must consult the Cures database no earlier than 24 hours, or the previous business day, before prescribing a Schedule II, III or IV controlled substance:
  - to a patient for the first time and
  - at least once every 4 months thereafter if the substance remains part of the treatment of the patient
What's the strongest over-the-counter pain killer you got?
AB 720 – inmates’ informed consent for psychotropic medications required now not only for those after sentencing, but also to those awaiting arraignment, trial or sentencing (limited to six months);

> adds additional requirements before involuntary meds can be administered (any court-ordered psych med must be administered in consultation with a psychiatrist not involved in the treatment of the inmate at the jail, if one is available – Penal Code 2603
Drug Prescribing -continued

**AB 1048** – allows pharmacists to dispense a Schedule II controlled substance as a **partial fill** if requested by the patient or prescriber;

- also drops requirement that pain be assessed each time a patient’s vital signs are obtained (instead requires that pain be assessed in a consistent manner appropriate for the patient).

**SB 443** – allows **automated drug delivery systems to be located on the premises of a fire station for use by EMS providers**; the EMS provider must obtain a license from the Board of Pharmacy for each EMS-ADDS (automated drug delivery system) they maintain, and comply with other requirements (e.g., drugs may only be restocked by a medical director, pharmacist, or licensed designed paramedic).
Drug Prescribing -continued

**AB 395** – Adds medication-assisted treatment (MAT) to list of services licensed by CA DHCS and recognizes use in treating SUDs;

- authorizes payment by Drug Medi-Cal (bills submitted within six months), and
- oks use of methadone, LAAM, buprenorphine, or other FDA approved drugs for purpose of MAT. (H&S 11220, 11839.1, 11839.2, 11839.3, 11893.5, 11839.6; W&I 14021.6)
Mental Health

**AB 340** – requires CA DHCS, together with DSS and others, to convene by 5/1/18 an advisory group to update, amend or develop tools for screening children for trauma with in the Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) benefit and to report, no later than 5/1/19 their findings and recommendations; requires a review of the protocols for the screening of trauma in children at least once every 5 years, or upon the request of the department.

**AB 501** – Authorizes CA DSS to (no later than 1/1/19) license short-term residential therapeutic programs operating as a children’s crisis residential programs and requires the department to regulate those programs (to help divert youth from unnecessary psychiatric hospitalizations)
Mental Health -continued

**AB 1315** – establishes the Early Psychosis Intervention Competitive Selection Process Plus Program and an advisory committee to the Mental Health Services Oversight and Accountability Commission to expand the provision of high-quality evidence-based early psychosis and mood disorder detection and intervention; also provides for the Early Psychosis Detection and Intervention Fund to be used for the purposes that are specified in the bill.

**SB 565** – requires inpatient psychiatric facilities, upon patient’s completion of 14 day intensive treatment, to make reasonable attempts to notify family or other persons designated by the patient, at least 36 hours prior to any certification review hearing for an additional 30 days of treatment, unless the patient requests that this information not be provided.
New laws impacting Privacy and Confidentiality
Confidentiality

**AB 1119** – explicitly permits communication of patient information during the provision of emergency services between mental health professionals and emergency medical personnel at the scene of an emergency, or in an emergency transport vehicle, or other professional person or emergency personnel at a health facility – this permits sharing MH info for “treatment purposes” with other health providers (with verbal permission, ok to share with family, friends and others directly involved in patient’s care)

AND COMPLETELY CHANGES NUMBERING OF SUBSECTIONS UNDER WELFARE & INSTITUTIONS CODE 5328 !!!
Confidentiality - continued

**AB 2119** – Disclosure to Coroner (Eff. 1/1/17)

- Permits the disclosure of health and mental health information when requested by a medical examiner or forensic pathologist
- No re-disclosure to a 3rd party without a court order or authorization of the beneficiary or personal representative
- Amends Civil Code 56.10 and W& I Codes 5328.8 and 4515.
Confidentiality - continued

**AB 2083** – disclosures to Child Death Review Team (eff. 1/1/17)

- Clarifies that health care providers can disclose confidential medical and mental health information to an interagency child death review team that is investigating a child’s death. (See Penal Code 11174.32)
Confidentiality - continued

**AB 210** – adds 18999.8 to W&I Code re: MDT’s for Homeless adults and families

- allows counties to develop a homeless adult and family multidisciplinary team to facilitate identification and assessment of homeless individuals and link them to housing and supportive services;

- this bill allows service providers on the team to share confidential information to ensure continuity of care, BUT

  - Healthcare providers might violate HIPAA if they share with MDT without permission
  
  - Behavioral health care providers must still follow W&I 5328 and 42 CFR Part 2 before sharing mental health or substance use disorder treatment program information

    - see W&I Code 18999.8(g) *This section shall not be construed to restrict guarantees of confidentiality provided under state and federal law*

- physical health info sharing may be ok if it is for “treatment purposes” by HIPAA
Consent & confidentiality -continued

**AB 413** – Existing law makes it a crime, subject to specified exemptions, for a person to intentionally eavesdrop and republish the information (Planned Parenthood case).

- This bill would allow a party to a confidential communication to record the communication for the purpose of obtaining evidence reasonably believed to relate to **domestic violence**, ...and the evidence so obtained would not be rendered inadmissible in a **prosecution against the perpetrator** ...

- also authorizes a victim of domestic violence ...seeking a domestic violence restraining order from a court to record ...communications made by the perpetrator for the ...providing ... evidence to the court. (Amends Penal Code 633.5 and 633.6)
SB 54 – Sharing data with law enforcement

Gov’t. Code 7284. This chapter shall be known, and may be cited, as the California Values Act.

Gov’t. Code 7284.2. The Legislature finds and declares the following:

(a) Immigrants are valuable and essential members of the California community. Almost one in three Californians is foreign born and one in two children in California has at least one immigrant parent.

(b) A relationship of trust between California’s immigrant community and state and local agencies is central to the public safety of the people of California.

(c) This trust is threatened when state and local agencies are entangled with federal immigration enforcement, with the result that immigrant community members fear approaching police when they are victims of, and witnesses to, crimes, seeking basic health services, or attending school, to the detriment of public safety and the well-being of all Californians.

(d) Entangling state and local agencies with federal immigration enforcement programs diverts already limited resources and blurs the lines of accountability between local, state, and federal governments.
(e) State and local participation in federal immigration enforcement programs also raises constitutional concerns, including the prospect that California residents could be detained in violation of the Fourth Amendment to the United States Constitution, targeted on the basis of race or ethnicity in violation of the Equal Protection Clause, or denied access to education based on immigration status.

(f) This chapter seeks to ensure effective policing, to protect the safety, well-being, and constitutional rights of the people of California, and to direct the state’s limited resources to matters of greatest concern to state and local governments.

(g) It is the intent of the Legislature that this chapter shall not be construed as providing, expanding, or ratifying any legal authority for any state or local law enforcement agency to participate in immigration enforcement.
Gov’t. Code 7284.8.

(a) The Attorney General, by October 1, 2018, in consultation with the appropriate stakeholders, shall publish model policies limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law at public schools, public libraries, health facilities operated by the state or a political subdivision of the state, courthouses, Division of Labor Standards Enforcement facilities, the Agricultural Labor Relations Board, the Division of Workers Compensation, and shelters, and ensuring that they remain safe and accessible to all California residents, regardless of immigration status. All public schools, health facilities operated by the state or a political subdivision of the state, and courthouses shall implement the model policy, or an equivalent policy. The Agricultural Labor Relations Board, the Division of Workers’ Compensation, the Division of Labor Standards Enforcement, shelters, libraries, and all other organizations and entities that provide services related to physical or mental health and wellness, education, or access to justice, including the University of California, are encouraged to adopt the model policy....
Break
"Bad news, its curiosity"
42 CFR Part 2 Changes
42 CFR Part 2 - Substance Use Disorder Confidentiality Regulations

42 CFR Part 2 – Final rule (effective March 21, 2017)

- New definitions
- New rules re: emergency exception
- New security requirements
- New authorization form requirements (must specify name of third party to whom records may be sent if not a healthcare provider or entity with whom the patient has a “treating provider relationship”
Major changes of note

- Intended to modernize 42 CFR Part 2 by facilitating the electronic exchange of SUD information for treatment and other legitimate healthcare purposes while ensuring appropriate confidentiality protections.

- **Definitions (2.11) Simplified and Clarified**
  
  - Revised definitions include: *patient, patient identifying information, program, qualified service organization (QSO), records, and treatment.*
  
  - Added definitions for: *Part 2 program, substance use disorder, treating provider relationship, and withdrawal management*
Applicability (2.12) clarified to only apply to identified unit within a general medical facility of general medical practice if it holds itself out as providing, and provides, SUD dx, tx, or referral for treatment, or if the primary function of medical personnel or other staff in the general medical facility or practice is the provision of such services and they are identified as providing such services.
42 Part 2 - continued

- *medical emergency* exception revised (disclosure without consent only if person is *not* able to provide consent)
<table>
<thead>
<tr>
<th>Old</th>
<th>New</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 2.51 - Medical Emergencies.</td>
<td>§ 2.51 Medical emergencies.</td>
</tr>
<tr>
<td>“…may be disclosed to medical personnel who have a need for information about the patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention…”</td>
<td>“…may be disclosed to medical personnel to the extent necessary to meet a bona fide medical emergency in which the patient's prior informed consent cannot be obtained…”</td>
</tr>
</tbody>
</table>
42 CFR Part 2 -continued

- **Security (2.16)** – Part 2 Programs and “other lawful holders” of Part 2 information must have formal policies and procedures addressing security, including sanitization of associated media for both paper and electronic records.

- **Notice of Privacy Practices re: 42 CFR Part 2 provisions (2.22)** may be provided electronically; must include info on where to report violations to government agencies.
### Old

<table>
<thead>
<tr>
<th>Old</th>
<th>New</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2.16 Security for written records.</strong></td>
<td></td>
</tr>
</tbody>
</table>
| (a) Written records which are subject to these regulations must be maintained in a secure room, locked file cabinet, safe or other similar container when not in use; and (b) Each program shall adopt in writing procedures which regulate and control access to and use of written records which are subject to these regulations. | **2.16 Security for records**

(a) The part 2 program or other lawful holder of patient identifying information must have in place formal policies and procedures to reasonably protect against unauthorized uses and disclosures of patient identifying information and to protect against reasonably anticipated threats or hazards to the security of patient identifying information. These formal policies and procedures must address:

1. Paper records, including:
   - Transferring and removing such records; and
   - Destroying such records, including sanitizing the hard copy media associated with the paper printouts, to render the patient identifying information non-retrievable; and
   - Maintaining such records in a secure room, locked file cabinet, safe, or other similar container, or storage facility when not in use; and
   - Using and accessing workstations, secure rooms, locked file cabinets, safes, or other similar containers, and storage facilities that use or store such information; and
   - Rendering patient identifying information non-identifiable in a manner that creates a very low risk of re-identification (e.g., removing direct identifiers).

2. Electronic records, including:
   - Copying, downloading, forwarding, transferring, and removing such records; and
   - Destroying such records, including sanitizing the electronic media on which it was stored, to render the patient identifying information non-retrievable; and
   - Maintaining such records; and
   - Using and accessing electronic records or other electronic media containing patient identifying information; and
   - Rendering the patient identifying information non-identifiable in a manner that creates a very low risk of re-identification (e.g., removing direct identifiers).

(b) [Reserved] |
Confidentiality Safeguards (2.13) where patient specifies on Consent Form a “general designation” in “To Whom” section permitting information to be disclosed to those with a “treating provider relationship” e.g., to an HIE and to its unnamed HIE members with “treatment relationship” with patient; the patient has right to request List of Disclosures of entities to which their information has been disclosed
Consent Requirements (2.31)

- Patient can include a “general designation” in the “to whom” section of consent form if recipient has treating provider relationship and form
  - Includes explicit description of amount and kind of SUD treatment info that may be disclosed and
  - The “from whom” section specifically names the Part 2 program or other lawful holder of information that can make the disclosure

- Consent form includes statement that patient understands terms of their consent and that if they use “general designation” they have right to obtain upon request a list of entities with treating provider relationship to which their info has been disclosed

- Individuals without a “treating provider relationship” MUST BE NAMED BY NAME!!!
Old

§ 2.31 Form of written consent.

(a) Required elements. A written consent to a disclosure under these regulations must include:

(1) The specific name or general designation of the program or person permitted to make the disclosure.

(2) The name or title of the individual or the name of the organization to which disclosure is to be made.

(3) The name of the patient.

...
*Consent options: to whom

- If a general designation (e.g. “all my mental health providers at XYZ Hospital”) is used on the consent form, the entity must have a mechanism in place to determine whether a treating provider relationship exists with the patient whose info is being disclosed.

  For example:
  - HIE or ACO requires participating providers to attest to having a treating provider relationship before accessing a patient’s Part 2 info
  - HIE or ACO provides a patient portal where patients can designate their treating providers
*Consent options:  List of disclosures (cont.)

- Request for list must be in writing
- Only disclosures made in past 2 years
- The intermediary entity (e.g. HIE, ACO), *not* the Part 2 program, is responsible for giving the list of disclosures to the patient
- Respond within 30 days

List must contain:
- name of entity to which disclosure was made,
- date of disclosure, and
- brief description of patient identified information disclosed
Another new feature of the “To Whom” section: Patients can specify past, present, and future treating providers

According to SAMHSA, if a patient does not specify past, present, and/or future treating providers, disclosing entity should presume patient intends disclosure only to current treating providers
Consent option #1: Written Consent

Authorization for Use, Exchange or Disclosure of Protected Health Information (PHI)

Completion of this document authorizes the disclosure, exchange and use of health information about you. Failure to provide all information requested may invalidate this authorization.

Name of patient: ________________________________

Use and Disclosure of Health Information

I hereby authorize:

☐ A. All health information pertaining to my medical history, mental or physical condition and treatment received;

OR

☐ B. Only the following records or types of health information (including any dates):

AND

☐ I specifically authorize release of the following information (check as appropriate):

☐ Mental health treatment information ________ (initial)
☐ HIV test results ________ (initial)
☐ Substance use disorder treatment information ________ (initial)

Substance use disorder information subject to this authorization must be explicitly described:

__ __ __

* A separate authorization is required to authorize the disclosure of any psychotherapy notes, as outlined in the federal regulations implementing the Health Insurance Portability and Accountability Act.
Written Consent –cont.

to: [name(s) of individual(s)/entity(ies) authorized to receive the information):

☐ Named individual(s):

[include person’s name and address]

☐ Named entity(ies) with treating provider relationship with me:

[include name of the entity(ies)]

☐ Named third-party payer:

☐ Named entity(ies) without a treating provider relationship*

*One of the following box(es) must also be checked and completed as applicable)

☐ Named individual participant:

☐ Named participating entity(ies) with treating provider relationship:

☐ **General designation of individual or entity or class of participants with treating provider relationship:

[**If a general designation is indicated, please confirm your understanding that upon your request, and consistent with 42 CFR Part 2, you must be provided with a list of entities to which this information has been disclosed pursuant to this general designation. [Patient/patient representative initials]]

PURPOSE
State the specific purpose(s) of requested use or disclosure (the disclosure will be limited to that information necessary to carry out the stated purpose):

[__________________________________________________________________________]

Limitations, if any:

[__________________________________________________________________________]
Consent option #2: Patient “self-disclosure”

- Since the patient might not be able to remember, or state, the name of each non-treating individual (or their supervisor/vacation substitute/newly-assigned-to-the-case staffer) to whom the patient wants the information disclosed, but we know the following is NOT ok after March 21 2017:
  - “my probation officer”
  - “my CPS Case Worker”
  - “my child’s IEP team” or
  - “my public defender”
  - “the Tragic County Sheriffs’ Department liaison to the Back on Track MDT Program”

- ...you could instead provide the information to those third parties as a “self-disclosure” from the patient by simply giving the patient the following letter **on your stationary**, to deliver him or herself to an MDT, or other non-treating third party:
Dear Jeremy,

Congratulations on your clean random urine test that was done last Tuesday! Way to go!! I bet your probation officer will be happy with these lab results too! : )

Best regards,

*Sally Smith*
Certified Substance Abuse Counselor
Tragic County SUD Program
For an MDT, Probation Diversion Program or the Courts, the County SUD program could (ahead of time) submit a list of sample signatures and names of providers who would likely sign such a release, and a copy of the program’s stationary, which would then be useful in reducing fraud.

Similarly, a copy of selected pages of the patient chart could also be provided to the patient pursuant to “access” rules and the patient could then submit the scanned copies to the individual, MDT or other entity (e.g., Probation or Social Services Dept.) that was in need of the information in order to provide the patient with services.
In cases involving the courts, e.g., diversion programs for DUI or CPS cases, could SUD Program get a Court order per Subpart E?

E.g., Court Order (42 CFR 2.61 et seq) to submit information to the Department of Motor Vehicles, “probation department,” “district attorney’s office” and “public defender”?

- Person is already before the Judge
- Person has opportunity to object
- Disclosure is in connection with litigation or an administrative proceeding in which the patient is offering testimony or other evidence related to the records, or the disclosure meets other requirements of Subpart E
- Only the specific information that is described in the order is disclosed
Consent option #4 - Waiver of Rights (legal ??)

- Use a regular HIPAA and 42 CFR Part 2 compliant authorization form (except for the part that requires people to be named by name, e.g., the name of the DUI program administrator and each assigned staff member), and include a waiver of the right to have each third party recipient named by name:

“I understand that federal law does not permit my information to be released to individuals with whom I do not have a treating provider relationship unless I specifically name them each by name on a written consent form that I sign. I hereby waive that protection and instead opt to merely describe those individuals by their role in helping me.”
Section 2.32 - Prohibition on Re-disclosure - Each disclosure made with the patient’s written consent must be accompanied by one of the following written statements:
“This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR Part 2). The federal rules prohibit you from making any further disclosure of information in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see section 2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at sections 2.12(c)(5) and 2.65.”
“42 CFR Part 2 prohibits unauthorized disclosure of these records.”
42 CFR Part 2 - new regulations - cont.

- **Redisclosure prohibition (2.32)** only applies to SUD information

- **Other changes:**
  - research rules changed to permit, under certain circumstances, data-linking to other research
  - audit and evaluation modernized to include electronic auditing and inclusion of audits or evaluations of ACOs or similar CMS-regulated entities and sharing with business associates and QSOs
Summary of Confidentiality Issues for CA Healthcare Providers

- **HIPAA** – 45 CFR Parts 160 and 164 (federal)

- **State law**
  - **Confidentiality of Medical Information Act** – CMIA – Civil Code 56.10 et seq. (physical health information)
    - Civil Code 56.30 – says section 56.10 does not apply to criminal justice requests by law enforcement; those requests are covered by Penal Code 1543 - written authorization, court order or search warrant still generally required (HIPAA still applies)
  - **LPS Act** – Welfare & Institutions Code 5328 et seq. (mental health information from hospitals, CSUs or certain other programs including outpatient Medi-Cal)
  - **HIV** – Health and Safety 120980 et seq.

- **42 CFR Part 2** (federal)
  - Substance Use Disorder (SUD) treatment programs
Basic Privacy Rule
(Applicable to All Disciplines)

- Don’t talk unless you **MUST** or **MAY**!

- Shhhhhhhhhhh!

- If you aren’t sure:
  - “may I put you on hold for just a minute?” or
  - “would you mind waiting here for just a minute?” or
  - “can I get your name and number and call you back?”
With the new prescribing laws, should doctors just stop treating pain and refer it out to specialists?
Ethical Dilemmas going forward...

**Pain prescribing**: if doctors don’t prescribe opioids to patients with chronic pain, or stop treating them altogether, they may opt to use more dangerous, but more easily available, street drugs...
Personal ethics vs. or state/federal regulations, employer’s policies, or “bad press” – what are the rules? Examples in the news...

- Government employee “flipping off” presidential limo while riding bike on her own time
- Attending neo-Nazi rally and appearing on the news while carrying a sign supporting the Alt-Right
- Writing letter to the editor decrying your community’s “sanctuary city” status
- Sexual misconduct years earlier
Other ethical issues

- Doing the “right” thing (who decides what the right thing is for a patient when there is risk with either choice?)
- Honesty and integrity – lots of implications in health care
  - Timely charting
  - Accurate billing
  - Not taking on more than you can competently do
Social media – your freedom of expression may be limited by the nature of the work you do

- Unless you have permission, there is no exception for disclosing PHI on social media
  - PHI doesn’t have to be explicit (“naming names”)
    - Example: RIP Edith
    - Example: “fun at the petting zoo” photos
    - Example: Board of Supervisors consideration of program closure
    - Example: defending self from letter to the editor
    - Example: eating disorder support group that isn’t private
Free speech vs. ethical duties

- Linking yourself to your employer when you are making a political statement, e.g.,:
  - NFL standing for the anthem
  - DACA protest - speaker’s list
  - ACA commentary on state of healthcare
  - Attending “reclaim the right” rally and being photographed carrying a torch
  - Example: “cry me a river Sweetheart, just don’t sit next to me on the plane”
Citations/Resources

- 45 CFR Parts 160 and 164 - www.hhs.gov
- California Civil Code 56.10 (Confidentiality of Medical Information Act), and 56.30, Welfare & Institutions Code 5328 et seq, Health and Safety Code 120980, 120985, 121010 (HIV test results) - www.leginfo.ca.gov
- 42 USC 1395 US Department of Health and Human Services - www.hhs.gov
- California Office of Health Information Integrity (Cal OHII) – www.calohii.ca.gov
- California Hospital Association – calhospital.org (publications include the CHA California Health Information Privacy Manual - 2017)
Questions?