



VOLUME 13: PRIVACY	Effective Date: 2/15/12
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13.1 GENERAL USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION POLICY	Attachments: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

I. POLICY

Protected Health Information (PHI) maintained by California Correctional Health Care Services (CCHCS) is private and confidential. CCHCS workforce members may not use or disclose PHI, except as permitted or required by this chapter or as otherwise permitted or required by law.

II. PURPOSE

To ensure CCHCS compliance with state and federal privacy requirements for state entities that maintain PHI.

III. DEFINITIONS

Covered Entity: Health plans, health care clearinghouses, and health care providers who transmit any health information in electronic form in connection with a transaction that is subject to federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements, as those terms are defined and used in the HIPAA regulations, 45 Code of Federal Regulations (CFR) Sections 160 and 164.

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

Health Care Operations: Any of the following activities of CCHCS or a covered entity to the extent that the activities are related to covered functions:

- Conducting quality assessment and improvement activities, including development of clinical guidelines.
- Population-based activities related to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives, and related functions that do not include treatment.
- Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students and trainees in areas of health care learn under supervision to practice or improve their skills, accreditation, certification, licensing, or credentialing activities.
- Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs.
- Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payments.

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- Business management and general administrative activities of the entity, including but not limited to the following: management activities relating to implementation of or compliance with federal, state and local law; customer service, including the provision of data analysis; resolution of internal grievances, including the resolution of disputes from patients regarding the quality of care and eligibility for services.

Payment: The activities undertaken by CCHCS to obtain or provide reimbursement for the provision of health care. Payment activities relate to the individual to whom health care is provided and include, but are not limited to:

- Determinations of eligibility or coverage (including coordination of benefits or the determination of cost sharing amounts), and adjudication of health benefit or health care claims.
- Billing, claims management, collection activities, and related health care data processing.
- Review of health care services with respect to medical necessity, appropriateness of care, or justification of charges.
- Utilization review activities, including pre-certification and pre-authorization of services, concurrent and retrospective review of services.

Protected Health Information: Information created or received by CCHCS which identifies or can be used to identify an individual as it relates to past, present, or future health conditions; health care services provided to the individual; or health care related payments. This applies to information that is transmitted or maintained in verbal, paper, or electronic form.

Psychotherapy Notes: 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 patient'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: The provision, coordination, or management of health care 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 for the referral of a patient for health care from one health care provider to another.

Use: The sharing, employment, application, utilization, examination, or analysis of information that identifies, or reasonably can be used to identify, an individual within CCHCS.

Workforce: Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for CCHCS or a business associate, is under the direct control of CCHCS or a business associate, whether or not they are paid by CCHCS or the business associate.

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IV. RESPONSIBILITY

Oversight responsibility of the Privacy Office shall be vested in the Privacy Officer. The Privacy Officer is required to oversee privacy rights as required by laws, policies, and standards for respecting the rights of individuals with regard to the collection, use, and disclosure of personal information throughout CCHCS.

V. USE AND DISCLOSURE OF PHI

A. Use and Disclosure of PHI for TPO Purposes

CCHCS workforce members may use or disclose PHI without patient authorization as follows:

1. For CCHCS' own Treatment, Payment, or Health Care Operations (TPO).
2. For treatment activities of another health care provider.
3. To another covered entity or health care provider for its payment activities.
4. To another covered entity for its health care operations activities, if CCHCS and the other covered entity has or had a relationship with the patient who is the subject of the PHI being requested, and the disclosure is:
 - a. For the purposes listed in paragraphs 1, 2 or 3 of the definition of health care operations; or
 - b. For the purpose of health care fraud and abuse detection or compliance.

However, CCHCS and its workforce must limit PHI use and disclosure to the Minimum Necessary amount of information required to complete the desired task. For more information on the Minimum Necessary standard, please refer to Inmate Medical Services Policies & Procedures (IMSP&P), Volume 13, Chapter 4, Minimum Necessary Use and Disclosure of Protected Health Information Policy.

B. Use and Disclosure of PHI for Non-TPO Purposes

CCHCS may not use and disclose PHI for non-TPO purposes, unless the disclosure is pursuant to a valid authorization for disclosure of PHI from the patient or the personal representative of the patient, or unless the disclosure meets an exception in one of the following IMSP&P, Volume 13 Policies:

1. Chapter 2, Use and Disclosure of Protected Health Information Based on Patient Authorization Policy;
2. Chapter 6, Use and Disclosure of Protected Health Information: Special Exceptions Policy;
3. Chapter 8, De-identification of Patient Protected Health Information and Use of Limited Data Sets Policy; and
4. Chapter 9, Business Associate Use and Disclosure of Protected Health Information Policy.

C. Media Inquiries

Institutions shall forward all media inquiries regarding the release of patient PHI to the CCHCS Office of Communications. CCHCS shall provide responses for PHI inquiries from external entities (e.g., legislative, advocacy groups) in accordance with IMSP&P, Volume 1, Chapter 12.2, Consolidated Controlled Correspondence and Patient-inmate Health Care Inquiry Line Response Policy.

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D. Psychotherapy Notes and HIV Test Results

The use and disclosure of psychotherapy notes and HIV test results are subject to further limitations as explained in IMSP&P, Volume 13, Chapter 2, Use and Disclosure of Protected Health Information Based on Patient Authorization Policy.

E. Health Records Procedures

Disclosure of all or part of a patient's health record shall be performed in accordance with IMSP&P, Volume 6, Health Information Management policies and procedures.

VI. TRAINING REQUIREMENTS AND CONTACT INFORMATION

- A. Privacy training is required for new employees during New Employee Orientation and annually thereafter.
- B. For questions or clarification, please contact: Privacy@cdcr.ca.gov or 1-877-974-4722.

VII. REFERENCES

- Code of Federal Regulations, Title 45, Subtitle A, Subchapter C, Part 160, Subpart A, Section 160.103 - Definitions
- Code of Federal Regulations, Title 45, Subtitle A, Subchapter C, Part 164, Subpart E, Section 164.501 - Definitions, Section 164.502 - Uses and disclosures of protected health information: General rules, and Section 164.506 - Uses and Disclosures to carry out treatment, payment, or health care operations
- California Correctional Health Care Services, Inmate Medical Services Policies and Procedures, Volume 1, Chapter 12, Policy 1.12.2 Consolidated Controlled Correspondence and Patient-inmate Health Care Inquiry Line Response Policy
- California Correctional Health Care Services, Inmate Medical Services Policies and Procedures, Volume 13, Chapter 2, Use and Disclosure of Protected Health Information Based on Patient Authorization Policy
- California Correctional Health Care Services, Inmate Medical Services Policies and Procedures, Volume 13, Chapter 3, Enforcement, Sanctions, and Penalties for Violations of Individual Privacy Policy
- California Correctional Health Care Services, Inmate Medical Services Policies and Procedures, Volume 13, Chapter 4, Minimum Necessary Use and Disclosure of Protected Health Information Policy
- California Correctional Health Care Services, Inmate Medical Services Policies and Procedures, Volume 13, Chapter 6, Use and Disclosure of Protected Health Information: Special Exceptions Policy
- California Correctional Health Care Services, Inmate Medical Services Policies and Procedures, Volume 13, Chapter 8, De-identification of Patient Protected Health Information and Use of Limited Data Sets Policy
- California Correctional Health Care Services, Inmate Medical Services Policies and Procedures, Volume 13, Chapter 9, Business Associate Use and Disclosure of Protected Health Information Policy