



VOLUME 13: PRIVACY	Effective Date: 2/15/2012
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13.2 USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION BASED ON PATIENT AUTHORIZATION POLICY	Attachments: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

I. POLICY

California Correctional Health Services (CCHCS) workforce members may use or disclose Protected Health Information (PHI) pursuant to and in compliance with a valid patient authorization. Such disclosures must be performed in accordance with the policies in this Chapter and in Inmate Medical Services Policies and Procedures (IMSP&P), Volume 6, Health Information Management.

II. PURPOSE

To authorize certain uses and/or disclosures of PHI based on patient’s authorization and to identify applicable requirements for such patient authorizations.

III. DEFINITIONS

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

Health Record Custodian: The person(s) or CCHCS subdivision(s) responsible for the maintenance, retention, access, data integrity, and data quality of PHI.

Personal Representative: A person who has authority, under applicable state law, to act on behalf of a patient in making health care decisions related to the patient.

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.

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.

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.

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V. USE AND DISCLOSURE OF PHI

A. When Patient Authorization is Required

As outlined in detail in IMSP&P, Volume 13, Chapter 1, General Use and Disclosure of Protected Health Information Policy, CCHCS may use and disclose PHI without a patient's authorization for certain treatment, payment, or health care operations activities. In addition, privacy law permits the release of PHI without a patient's authorization pursuant to specific exceptions outlined in IMSP&P, Volume 13, Chapter 6, Use and Disclosure of Protected Health Information: Special Exceptions Policy, or pursuant to a business associate agreement as provided in IMSP&P, Volume 13, Chapter 9, Business Associate Use and Disclosure of Protected Health Information Policy. For all other uses and disclosures of PHI, CCHCS shall require a patient's signed authorization form.

B. Disclosure of the Health Record

Health Information Management is the custodian of the health record and shall have the sole authority to disclose the health record, in whole or in part, pursuant to a patient authorization.

C. Valid Authorizations

1. A patient's or their personal representative's authorization is considered valid if it contains at least the following elements:
 - a. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.
 - b. The name or other specific identification of the person(s) authorized to make the requested use or disclosure.
 - c. The name or other specific identification of the person(s) to whom CCHCS may make the requested use or disclosure.
 - d. A description of each purpose of the requested use or disclosure and the specific uses and limitations on the use of the health information by the persons or entities authorized to receive it. The statement "at the request of the individual" is a sufficient description of the purpose when a patient initiates the authorization and does not, or elects not to, provide a statement of the purpose.
 - e. An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure after which disclosure is no longer authorized.
 - f. Signature which serves no other purpose than to execute the document and date. If the authorization is signed by a personal representative of the patient, a description of such representative's authority to act for the individual must also be provided.
 - g. A statement that the patient has the right to revoke the authorization in writing and a description of how the individual may revoke the authorization.
 - h. A statement that CCHCS may not condition treatment on whether the patient signs the authorization.
 - i. A statement concerning the potential for the information disclosed to be subject to redisclosure by the recipient and no longer protected by state and/or federal law.
 - j. A statement advising the patient of their right to receive a copy of the authorization.
 - k. The authorization must be in writing in at least 14 point type and must be clearly separate from any other language present in the same document.

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2. The CDCR 7385, Authorization for Release of Protected Health Information, satisfies the above requirements and should be used for disclosures pursuant to patient authorization. Other forms are disfavored, but may be accepted if they conform to all of the requirements in this policy.
3. An authorization is considered defective and invalid if any material information in the authorization is known to be false by CCHCS or its employees or if any of the following defects exists:
 - a. The expiration date has passed.
 - b. The authorization has not been filled out completely or lacks a required element.
 - c. The authorization is known to have been revoked.

D. Authorization Required: HIV Test Results

1. Except as provided in Section IV(D)(2) below, a valid written authorization to disclose HIV test results must be obtained before making such a disclosure. Written authorization is required for each separate disclosure of the test results. A general authorization by a patient to release medical information is not sufficient to release HIV test results; the authorization form must specifically indicate that HIV test results may be released.
2. **Exceptions:** HIV test results may be disclosed to the following persons without the written authorization of the subject of the test:
 - a. To the patient's legal representative, or to any person authorized to consent to the test.
 - b. To the patient's health care provider.
 - c. To the warden or his designee in accordance with California Health & Safety Code Section 121070.
 - d. As otherwise permitted or required by law; for example, to certain individuals as a result of occupational exposure. Legal counsel should be consulted related to such disclosures.

E. Revocation of Authorization

1. A patient may revoke an authorization at any time in writing. No such revocation shall apply to information already released while the authorization was valid and in effect.
2. **Exception:** Alcohol and drug treatment participants may verbally revoke authorization to disclose information obtained from alcohol and drug treatment programs. Verbal authorizations and revocations must be documented and maintained in the patient's health record.

F. Verification of Individuals Receiving Information

Information about a patient may not be disclosed pursuant to a written authorization without verifying the identity of the person receiving the information.

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.

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VII. REFERENCES

- Code of Federal Regulations, Title 42, Chapter 1, Subchapter A, Part 2 - Confidentiality of Alcohol and Drug Abuse Patient Records
- 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, Section 164.508 - Uses and disclosures for which an authorization is required, and Section 164.510 - Uses and disclosures requiring an opportunity for the individual to agree or to object
- California Civil Code, Division 1, Part 2.6, Chapter 2, Section 56.11
- California Health and Safety Code, Division 105, Part 4, Chapter 7, Sections 120975, 120980, 120985
- California Health and Safety Code, Division 105, Part 4, Chapter 9, Section 121070
- California Penal Code, Part 3, Title 8, Chapter 3, Section 7520
- California Correctional Health Care Services, Inmate Medical Services Policies and Procedures, Volume 13, Chapter 1, General Use and Disclosure of Protected Health Information Policy