

**County Of San Diego
Health and Human Services Agency (HHS)**

**Chapter: Health Insurance Portability and Accountability Act of 1996 (HIPAA)
Key Words: privacy, amend, protected health information**

SUBJECT: **Request For Amending Protected Health Information** NO: **HHS-L-2**
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DATE: July 27, 2007

REFERENCE: Federal Privacy Regulations, 45 C.F.R. Subtitle A, Subchapter C, Parts 160 and 164.

PURPOSE: To establish a process on how to handle requests to amend protected health information from individuals (patients/residents/clients) or their legal representatives.

BACKGROUND: County agencies designated as covered components must comply with privacy regulations promulgated under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). They must also comply with California laws and regulations pertaining to the use and disclosure of individually identifiable health information, unless such state laws and regulations are preempted by HIPAA.

HIPAA's privacy regulations outline many detailed requirements protecting the confidentiality of health information and providing individuals significant rights with respect to their health information. Compliance with these regulations is addressed in a series of County policies and procedures.

DEFINITIONS

Note: The definitions below are in compliance with the HIPAA and the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule).

Designated Record Set:

1. County as Health Care Provider: Records maintained by or for the County that are used, in whole or in part, by or for the County to make decisions about individuals. This designated record set includes:
 - Patient/resident/client medical records, including images (e.g. radiology films, fetal monitor strips, electrocardiograph (EKG) tracings, electroencephalograph (EEG) tracings, imaged records of procedures, and the like); and
 - Patient/resident/client billing records.

2. County as Health Plan: Records maintained by or for the County that are used, in whole or in part, by or for the County to make decisions about individuals. This designated record set includes the following records:
 - Enrollment;
 - Payment;
 - Claims adjudication; and
 - Case or medical management systems.

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The designated record set **excludes** information compiled by the County that is not used to make decisions about specific individuals, and includes, but is not limited to information compiled for peer review, quality assurance, and business operations.

Individually Identifiable Health Information: Information that is created or received by the County, that identifies an individual (or could reasonably be used to identify an individual) and that:

- Relates to the past, present, or future physical or mental health or condition of an individual;
- Relates to the provision of health care to an individual; or
- Relates to the past, present, or future payment for the provision of health care to an individual.

This includes demographic information (such as name, address, date of birth, sex, and race) collected from an individual.

Legal Representative: An individual's legal representative may include the following:

- Conservator of the Person – Court appointed;
- Attorney-in-Fact for Health Care – Holder of a valid Durable Power of Attorney for Health Care;
- Guardian of the Person – Court appointed;
- Parent – Unemancipated minor where the minor does not have the authority to authorize the release of records on his or her own behalf;
- Decedent's Personal Representative – Court appointed;
- Executor of a Decedent's Estate – Court appointed;
- Administrator of a Decedent's Estate – Court appointed;
- Personal Representative – Court appointed; or
- Beneficiary of a Decedent's Estate – Must provide adequate documentation that the person is a beneficiary of the decedent's estate and that no other person has the authority to prevent the release of the protected health information.

Note: This policy uses the term "legal representative." That term is meant to be synonymous with the Privacy Rule term "personal representative." This policy uses the term "legal representative" because the term "personal representative" has a separate and distinct legal meaning under California law.

Protected Health Information (PHI): Individually identifiable health information that is transmitted or maintained by electronic or any other medium. PHI does not include educational records of students maintained by federally funded educational agencies or institutions or persons acting for these agencies or institutions. PHI also does not include records of (1) students who are 18 years or older or are attending post-secondary educational institutions, (2)

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maintained by a physical or mental health care provider, (3) that are made, maintained, or used only in connection with the treatment of the student, and (4) that are not available to anyone, except a health care provider or appropriate professional reviewing the record as designated by the student.

Psychotherapy Notes: Notes recorded in any medium by a mental health professional documenting or analyzing the contents of conversations during a private, joint, family, or group counseling session that are filed separately from the rest of the individual's medical record.

Psychotherapy notes **exclude:**

- Medication prescription and monitoring records;
- Counseling session start and stop times;
- Modalities and frequency of treatment;
- Results of clinical tests; and
- Summaries of diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date.

POLICY: In compliance with state and federal laws and regulations, individuals will be given the opportunity to request that amendments be made to their PHI. This right applies to PHI and records in a designated record set for as long and the information is maintained in the designated record set.

PROCEDURES:

1. Request for Amendment

An individual must submit the request in writing and give a reason in support of the requested amendment. This may be done by completing the County's form "Request for Modification/Amendment of Protected Health Information" or through use of another acceptable format submitted by the individual.

2. Timely Review

The County shall inform the individual who requests that an amendment be made to his or her PHI of the requirements for properly making such a request. The County shall respond no later than sixty (60) calendar days after the request is received. This deadline may be extended for no more than thirty (30) calendar days by providing the individual with a written statement of the reason for the delay and the date on which the County will complete its action. Any notice that the County will take longer than sixty (60) calendar days to respond must be provided to the individual within sixty (60) calendar days of receiving the request.

3. Grounds for Denial of Amendment

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The County may deny an individual's request for an amendment to his or her PHI as follows:

- The PHI was not created by the part of the County subject to the Privacy Rule. The information may be amended, however, if the individual provides a reasonable basis on which to believe that the originator of the PHI is no longer available to act on the requested amendment.
- The PHI is not part of the designated record set.
- The PHI would not otherwise be available to the individual for inspection. (See Policy HHSa-L-1, Individual Access to Protected Health Information in the Designated Record Set.)
- The PHI that the individual has asked to be amended is accurate and complete.

4. Amending or Identifying Request and Notice to Individual

The County will inform the individual whether the amendment has been accepted or denied.

- If accepted in whole or in part, the County will:
 - Identify the records that are affected by the amendment and append or otherwise provide a link to the location of the amendment.
 - The County shall seek the individual's agreement to have the amended information shared with and then make reasonable efforts to provide a copy of the amendment within a reasonable time to the following:
 - i. Persons or entities identified by the individual as having received the PHI and as needing the amendment; and
 - ii. Persons or entities that the County knows have the PHI that is subject to amendment.
- If denied in whole or in part, the County must give the individual a statement of denial written in plain language. The written denial must include:
 - The basis of denial as allowed under Section 3 of this Policy and Procedure, "Grounds for Denial of Amendment";
 - A statement that the individual may submit a written statement of reasonable length disagreeing with the denial and explaining how the individual may file that written statement;

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- o How the individual may make a complaint; and
- o A statement that, if the individual does not submit a statement of disagreement, the individual may request that the County provide the individual's request for amendment and the denial with any future disclosures of the PHI that is the subject of the amendment request.
- If an individual has requested an amendment to his or her PHI and when providing that PHI to other persons or entities in the future, the County may prepare and place in the designated record along with the individual's written statement a rebuttal statement to the individual's statement. The County shall provide a copy of the rebuttal statement to the individual who submitted the statement of disagreement.

5. Future Disclosures of Amendment Information

In the event an individual has requested an amendment to his or her PHI and when the County provides that PHI to other persons or entities in the future, the County will provide either the information included in the designated record pertaining to the amendment request (e.g. amended record, individual's written statement of disagreement and County's rebuttal, or individual's request and County's denial), or at the County's election, an accurate summary of information relating to the requested amendment.

6. Notice to County by Other Entities of Amended PHI

If a part of the County that is subject to the Privacy Rule is informed by another covered entity of an amendment to an individual's designated record, the County must identify the records that are affected by the amendment and append or otherwise provide a link to the location of the amendment.

7. Documentation

The County must document and retain the titles of the persons or offices responsible for receiving and processing requests for amendments by individuals. This information will be provided to the County's Privacy Officer and will be updated as necessary.

All correspondence and associated documentation related to amendments, including denials, must be maintained for six (6) years as required by federal regulation.

QUESTIONS/INFORMATION: Privacy Officer of the County of San Diego


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SUNSET DATE: This policy will be reviewed for continuance by July 27, 2010.

Approved: 
Jean M. Shepard, Director
Health and Human Services Agency