



Your Patient Privacy Rights

A Consumer Guide to Health Information Privacy in California

Tips for Consumers

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Longstanding California state laws and new federal regulations give you rights to help keep your medical records private.¹ That means that you can set some limits on who sees personal information about your health. You can also set limits on what information they can see. And you can decide when they can see it. You can also review and ask for corrections to your medical records. This Consumer Information Sheet contains general descriptions of your basic patient privacy rights.

Your right to be told how your doctor will use your personal health information

Most doctors, hospitals, HMOs, and other health care organizations must give you a Notice of Privacy Practices.² This Notice tells you how personal information about your health will be used. It tells you who will see your information, what your rights are, and where to complain.

Generally, your doctor uses your health information to treat you and to refer you to specialists. Your doctor also uses your information to bill your insurance company and to improve the quality of health care.³

Your right to set limits on who gets to see your personal health information

Your doctor, insurance company, and other health care providers have to ask for your written permission before they can release your personal health information. This is true unless the release is for the purpose of treatment, payment, health care operations, or public health.⁴

In the case of sensitive information, like HIV test results or what you tell a psychiatrist, your written permission is required in most situations.⁵

Giving Your Permission

Your written permission is called an “authorization.” It must state what information can be released, to whom, and for what purpose. It must be dated. You have the right to say no without fearing any kind of pressure or retaliation. You have the right to change your mind at any time and take back your written authorization.⁶

You can also ask your doctor or health plan to limit how they use or release your information for treatment, payment, or health care operations. But they are not required to agree to your request.⁷

Contacting You

You also have the right to ask your doctor or health plan to contact you only in certain ways or at certain locations. For example, you can ask your doctor to send reminder notices to you at a certain address. Or you can ask to be called only at home rather than at work.

Health plans and insurers often send an Explanation of Benefits statement (EOB) to their policy holder. An EOB describes the services paid by the plan/insurer. Some family members on an insurance policy (adult children, children over the age of 13, and spouses) may want to keep the medical care they receive confidential because they received sensitive services. Or they fear that a disclosure of all or part of the medical information could endanger them. If this applies to you, you can request to have confidential EOBs and other communications from your health insurer sent to you instead of to the policy holder. The health plan/insurer may require that you put your request in writing and you must provide an alternative way for the health plan/insurer to send messages and EOBs to you.⁸

What Your Employer Can See

You can stop your employer from receiving most health information about you. Your doctor, insurance company, and other health care providers have to ask for your written permission before they can give your employer health information about you.⁹

You have the right to say no without fearing any pressure or retaliation from your employer. There are some situations in which your employer can receive information about your health. For example, your employer can receive certain information as the sponsor of an employee health plan. Another example is when you are required to pass a drug test for your job.

✓ Your right to request restriction of disclosure of medical information when you paid in full for the medical service

If you pay in full for a health care item or service, you can request your health care provider not to further disclose this information to a health plan or insurer. The provider can not give your information to the health plan/insurer for the purpose of payment or operations if you make this request.¹⁰

✓ Your right to be told to whom your personal health information has been given

You have the right to ask most health care providers for information on who has received your personal health information.

Accounting of Disclosures

This is called an “accounting of disclosures.” It must include the date of the disclosure, the name of the person who received the information, what information was disclosed, and the purpose of the disclosure. It must be given to you within 60 days of the receipt of your request. There are some exceptions for disclosure for treatment, payment, or health care operations.¹¹

✓ Your right to stop unwanted mail about new drugs or medical services

Most health care providers have to ask for your written authorization before they can use or sell your health information for marketing purposes.

Giving your permission

The authorization form they ask you to sign must tell you if they will receive payment for sharing your information. For example, your doctor cannot sell your health information to a drug manufacturing company so that the company can mail you a letter encouraging you to buy a certain drug instead of the one you are using. There are exceptions related to your treatment. For example, your health plan is allowed to send you information about new health care services it offers.¹²

✓ Your right to see and ask to correct information about you in your medical records

You may ask to read the information about you in your medical records. Your doctor or health plan must respond to your written request

within five working days of receiving it. If they deny your request, they must tell you why. For example, your doctor could refuse if he or she thinks showing you the information may cause harm to you or to someone else.¹³

Copying Your Records

You may make copies of your personal health information in your medical records. Your doctor or health plan may charge you a reasonable fee for making these copies.¹⁴ Certain companies that maintain medical information must provide copies to patients at no charge.¹⁵

Asking For Changes

You may ask your doctor or health plan to change information about you in your medical records if it is not correct or complete. Your doctor or health plan may deny your request. If this happens, you may add a statement to your file explaining the information.¹⁶

✓ Your Right to File a Complaint

Most doctors, health plans, hospitals, and other health care providers must tell you their process for handling complaints. They must tell you the name of the person to whom you may complain. File your complaint with the doctor, plan or organization first.

If you are an enrollee of a health plan and you have a concern that your health plan violated any state law regarding the privacy or confidentiality of your medical records, you may contact the California Department of Managed Health

Care's HMO Help Center at 1-888-HMO-2219 for assistance.

You also have the right to complain to the federal Office of Civil Rights about possible violations of federal health privacy law.¹⁷

Office for Civil Rights, Region IX
U.S. Department of Health and Human Services
50 United Nations Plaza, Room 322
San Francisco, CA 94102
Voice Phone (415) 437-8310
Fax (415) 437-8329
TDD (415) 437-8311

✓ You may have remedies under California law

California law also gives you the right to bring suit to recover damages in some cases of violation of state laws on health information privacy.¹⁸

✓ Additional Resources on Health Information Privacy

- Health Privacy Project, www.healthprivacy.org
- Privacy Rights Clearinghouse, "Fact Sheet 8A: HIPAA Basics: Medical Privacy," www.privacyrights.org/fs/fs8a-hipaa.htm
- Office for Civil Rights, U.S. Department of Health and Human Services, www.hhs.gov/ocr/hipaa/
- California Privacy and Security Advisory Board (on Health Information Exchange), information available at www.ohi.ca.gov

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NOTES

- ¹ The federal authority on health information privacy arises from the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Standards for Privacy of Individually Identifiable Health Information (45 CFR Parts 160 and 164). California has several laws on health information privacy, including the Confidentiality of Medical Records Act (Civil Code § 56 et seq.), the Patient Access to Health Records Act (Health & Safety Code § 123110 et seq.), the Insurance Information and Privacy Protection Act (Insurance Code § 791 et seq.), and the Information Practices Act (Civil Code § 1798 et seq.). Citations for specific rights enumerated in this document are provided below. All the referenced laws may be found on the Privacy Laws page of the California Department of Justice's Web site.
- ² HIPAA regulates only health care providers that transmit personal health information electronically. For notice, see HIPAA, 45 CFR § 164.520. Also on notice, see California Civil Code § 1798.17, which applies to state agencies.
- ³ For use and disclosure of health information for treatment, payment, or health care operations, or other permitted disclosures, see HIPAA, 45 CFR § 164.506 and § 164.512, and California Civil Code § 56.10 subdivision (c).
- ⁴ For disclosure limits, see HIPAA, 45 CFR § 164.502, and California Civil Code § 56.10.
- ⁵ For confidentiality of HIV test results, see California Health & Safety Code §§ 120975-121125. For confidentiality of psychiatric records, see California Civil Code § 56.104. Also see HIPAA, 45 CFR § 164.501 for definition of "psychotherapy notes," and 45 CFR § 164.508 subdivision (a)(2) for authorization requirements for use or disclosure of psychotherapy notes.
- ⁶ For authorization, see HIPAA, 45 CFR § 164.508, and California Civil Code § 56.11.
- ⁷ For limits on use and disclosure for treatment, payment or health care operations, see HIPAA, 45 CFR § 164.522 subdivision (a).
- ⁸ For confidential communications, see HIPAA 45 CFR § 164.522 subdivision (b) and California Civil Code § 56.107.
- ⁹ For disclosure to employers, see HIPAA, 45 CFR § 164.512 subdivision (b)(1)(v), and California Civil Code § 56.20.
- ¹⁰ For restrictions on disclosure, see HIPAA 45 CFR § 164.522 subdivision (a).
- ¹¹ For accounting of disclosures, see HIPAA 45 CFR § 164.528, and California Civil Code §§ 1798.25 and 1798.28.
- ¹² For marketing use, see HIPAA 45 CFR § 164.508 subdivision (a)(3), California Civil Code § 56.10 subdivision (d), California Health & Safety Code section 123148, and California Insurance Code §§ 791.13 subdivision (k) and 791.05.
- ¹³ For access to records, see HIPAA, 45 CFR § 164.524, California Health & Safety Code § 123110 subdivision (a), and California Civil Code § 1798.32.
- ¹⁴ For copying records, see HIPAA, 45 CFR § 164.524, California Health & Safety Code § 123110 subdivision (b), and California Civil Code § 1798.33.
- ¹⁵ For provisions on no charge for copies, see California Civil Code § 56.07.
- ¹⁶ For amending records, see HIPAA, 45 CFR § 164.526, California Health & Safety Code § 123111, and California Civil Code § 1798.35.
- ¹⁷ For complaints under HIPAA, see 45 CFR § 164.530 subdivision (d). HIPAA complaints must be filed with the Office of Civil Rights within 180 days of the date when the complainant knew or should have known of the violation (45 CFR § 160.306).
- ¹⁸ See California Civil Code § 56.35 on remedies for improper use or disclosure, California Health and Safety Code § 123120 on remedies for violation of access rights, and California Civil Code §§ 1798.45-1798.57 on remedies for violations by state agencies.