



Policy: HH.3007
Title: **Member Rights to Request Restrictions on Use and Disclosure of Protected Health Information**

Department: Office of Compliance
Section: Privacy

CEO Approval: /s/ Michael Hunn 11/20/2024

Effective Date: 04/01/2003

Revised Date: 11/07/2024

Applicable to: ☒ Medi-Cal
☒ OneCare
☒ PACE
☐ Administrative

I. PURPOSE

This policy describes the process by which a Member may request CalOptima Health to restrict the Use and Disclosure of his or her Protected Health Information (PHI), and how CalOptima Health shall process such requests in accordance with applicable statutory, regulatory, and contractual requirements.

II. POLICY

A. CalOptima Health must permit a Member to request restrictions of Uses and Disclosures of PHI for Treatment, Payment, and Health Care Operations and Disclosures permitted under Title 45, Code of Federal Regulations, Section 164.510(b). A Member may request CalOptima Health, in writing or orally, to restrict the Use and/or Disclosure of his or her PHI.

1. CalOptima Health retains the right to approve or deny such request.

B. CalOptima Health may agree to the Member's request to restrict Disclosure of PHI about the Member if:

1. The PHI pertains solely to a health care item or service for which the Member, or person other than the health plan on behalf of the Member, has paid the covered entity in full. If the law requires the Disclosure, CalOptima Health does not have to agree to the Member's restriction.

C. If CalOptima Health approves a Member's request to restrict the Use and Disclosure of the Member's PHI, CalOptima Health shall not be subject to such restrictions if:

1. Disclosure is Required by Law;

2. The restricted PHI is needed:

a. By a treating Provider;

b. For public health activities;

c. To report abuse, neglect, domestic violence, and activities related to criminal acts; or

- d. By a coroner.
 - 3. The Member requires Emergency Services; or
 - 4. The Disclosure is among those defined in Title 45, Code of Federal Regulations, Sections 164.512 and 164.522.
- D. CalOptima Health shall not Use and Disclose PHI covered by an agreed upon restriction in violation of that restriction. CalOptima Health cannot take back what was Used or Disclosed prior to approving the restriction request, but will limit the Use or Disclosure, in accordance with an agreed upon restriction in the future.

III. PROCEDURE

A. Requests for Restrictions on Use and Disclosure:

1. The Member or a Member's Personal Representative shall submit a written request to restrict either the Use and/or Disclosure of the Member's PHI to the CalOptima Health Office of Compliance. The request must include:
 - a. Request to Restrict Information on Use and Disclosure of Protected Health Information Form;
 - b. The PHI that is to be restricted;
 - c. Whether the Member wants to restrict the Use, Disclosure, or both; and
 - d. To whom the restriction(s) apply (e.g., Disclosures to a spouse, partner, or parent);
2. CalOptima Health may discuss the request with a Member or a Member's Personal Representative to ensure that such restrictions are in the Member's best interest.
3. If the restriction request involves Use, Disclosures, or both by contracted Providers, CalOptima Health may ask the Member to submit a separate restriction request to the Member's Providers.
4. CalOptima Health will remind the Member that CalOptima Health:
 - a. Retains the right to approve or deny such request;
 - b. May release the restricted PHI in emergency situations;
 - c. May release the restricted PHI if Required by Law; and
 - d. May terminate the agreement to restrict PHI.
5. CalOptima Health shall review a Member's request to restrict Use and Disclosure of PHI in coordination with Business Associates, as appropriate.
6. CalOptima Health will document the restriction, if any.

7. CalOptima Health shall notify the Member of the decision to approve or deny the Member's request within thirty (30) calendar days of receipt of the request, using the Response to Request for Restriction on Use and Disclosure of PHI Form.

B. Terminating a Restriction

1. CalOptima Health may terminate its agreement to a restriction of Use and Disclosure under the following circumstances:
 - a. The Member agrees to, or requests, the termination, in writing, to CalOptima Health.
 - b. The Member agrees verbally to the termination, and the verbal agreement is documented by CalOptima Health; or
 - c. CalOptima Health notifies the Member that it shall terminate its agreement to the restriction(s), except that such termination is only effective with respect to PHI created, or received, after the individual has been notified of the termination, except as provided in Section II.B.1. of this policy.
- C. The Office of Compliance shall retain copies of all requests and related notices on file for ten (10) years from the date the request is received by CalOptima Health or the date when the restriction was last in effect, whichever is later.

IV. ATTACHMENT(S)

- A. Request for Restriction on Use and Disclosure of Protected Health Information
- B. Response to Request for Restriction on Use and Disclosure of Protected Health Information
- C. Termination of Restriction

V. REFERENCE(S)

- A. CalOptima Health Compliance Plan
- B. CalOptima Health Contract with the Centers for Medicare & Medicaid Services (CMS) for Medicare Advantage
- C. CalOptima Health Contract with the Department of Health Care Services (DHCS) for Medi-Cal
- D. CalOptima Health PACE Program Agreement
- E. CalOptima Health Privacy Program
- F. CalOptima Health Policy HH.3000: Notice of Privacy Practices
- G. Department of Managed Health Care (DMHC) APL 22-010 (OPL) Guidance Regarding AB 1184 - Confidentiality of Medical Information
- H. Office of Civil Rights Privacy Rule Summary- Notice and Other Individual Rights
- I. Title 45, Code of Federal Regulations, §164.512
- J. Title 45, Code of Federal Regulations, §164.522

VI. REGULATORY AGENCY APPROVAL(S)

None to Date

VII. BOARD ACTION(S)

| Date | Meeting |
|------------|---|
| 12/01/2016 | Regular Meeting of the CalOptima Board of Directors |
| 12/07/2017 | Regular Meeting of the CalOptima Board of Directors |

| Date | Meeting |
|-------------|--|
| 12/06/2018 | Regular Meeting of the CalOptima Board of Directors |
| 12/05/2019 | Regular Meeting of the CalOptima Board of Directors |
| 12/03/2020 | Regular Meeting of the CalOptima Board of Directors |
| 12/20/2021 | Special Meeting of the CalOptima Board of Directors |
| 12/01/2022 | Regular Meeting of the CalOptima Health Board of Directors |
| 11/07/2024 | Regular Meeting of the CalOptima Health Board of Directors |

VIII. REVISION HISTORY

| Action | Date | Policy | Policy Title | Program(s) |
|---------------|-------------|---------------|--|--|
| Effective | 04/01/2003 | HH.3007 | Member Right to Request Restrictions on Use and Disclosure of Protected Health Information | Medi-Cal |
| Revised | 07/01/2007 | HH.3007 | Member Right to Request Restrictions on Use and Disclosure of Protected Health Information | Medi-Cal |
| Revised | 07/01/2011 | HH.3007 | Member Right to Request Restrictions on Use and Disclosure of Protected Health Information | Medi-Cal |
| Revised | 01/01/2013 | HH.3007 | Member Right to Request Restrictions on Use and Disclosure of Protected Health Information | Medi-Cal OneCare |
| Revised | 01/01/2014 | HH.3007 | Member Right to Request Restrictions on Use and Disclosure of Protected Health Information | Medi-Cal |
| Revised | 11/01/2014 | HH.3007 | Member Right to Request Restrictions on Use and Disclosure of Protected Health Information | Medi-Cal |
| Revised | 09/01/2015 | HH.3007 | Member Right to Request Restrictions on Use and Disclosure of Protected Health Information | Medi-Cal |
| Revised | 12/01/2016 | HH.3007 | Member Right to Request Restrictions on Use and Disclosure of Protected Health Information | Medi-Cal OneCare OneCare Connect PACE |
| Revised | 12/07/2017 | HH.3007 | Member Right to Request Restrictions on Use and Disclosure of Protected Health Information | Medi-Cal OneCare OneCare Connect PACE |
| Revised | 12/06/2018 | HH.3007 | Member Right to Request Restrictions on Use and Disclosure of Protected Health Information | Medi-Cal OneCare OneCare Connect PACE |
| Revised | 12/05/2019 | HH.3007 | Member Right to Request Restrictions on Use and Disclosure of Protected Health Information | Medi-Cal OneCare OneCare Connect PACE |
| Revised | 12/03/2020 | HH.3007 | Member Right to Request Restrictions on Use and Disclosure of Protected Health Information | Medi-Cal OneCare OneCare Connect PACE |

| Action | Date | Policy | Policy Title | Program(s) |
|---------------|-------------|---------------|--|--|
| Revised | 12/20/2021 | HH.3007 | Member Right to Request Restrictions on Use and Disclosure of Protected Health Information | Medi-Cal OneCare OneCare Connect PACE |
| Revised | 12/31/2022 | HH.3007 | Member Right to Request Restrictions on Use and Disclosure of Protected Health Information | Medi-Cal OneCare PACE |
| Revised | 09/01/2023 | HH.3007 | Member Right to Request Restrictions on Use and Disclosure of Protected Health Information | Medi-Cal OneCare PACE |
| Revised | 11/07/2024 | HH.3007 | Member Right to Request Restrictions on Use and Disclosure of Protected Health Information | Medi-Cal OneCare PACE |

IX. GLOSSARY

| Term | Definition |
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| Business Associate | <p>Has the meaning given such term in Section 160.103 of Title 45, Code of Federal Regulations. A person or entity who:</p> <ol style="list-style-type: none"> 1. On behalf of such covered entity or of an organized health care arrangement (as defined in this section) in which the covered entity participates, but other than in the capacity of a Member of the workforce of such covered entity or arrangement, creates, receives, maintains, or transmits Protected Health Information for a function or activity regulated by this subchapter, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities listed at 42 CFR 3.20, billing, benefit management, practice management, and repricing; or 2. Provides, other than in the capacity of a Member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation (as defined in §164.501 of this subchapter), management, administrative, accreditation, or financial services to or for such covered entity, or to or for an organized health care arrangement in which the covered entity participates, where the provision of the service involves the Disclosure of Protected Health Information from such covered entity or arrangement, or from another business associate of such covered entity or arrangement, to the person. <p>A covered entity may be a business associate of another covered entity.</p> <p>Business associate includes:</p> <ol style="list-style-type: none"> 1. A Health Information Organization, E-prescribing Gateway, or other person that provides data transmission services with respect to Protected Health Information to a covered entity and that requires access on a routine basis to such Protected Health Information. 2. A person that offers a personal health record to one or more individuals on behalf of a covered entity. 3. A subcontractor that creates, receives, maintains, or transmits Protected Health Information on behalf of the business associate. |
| Disclosure | <p>Has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations including the following: the release, transfer, provision of access to, or divulging in any other manner of information outside of the entity holding the information.</p> |
| Emergency Services | <p>Medi-Cal: Inpatient and outpatient Covered Services that are furnished by a qualified Provider and needed to evaluate or stabilize an Emergency Medical Condition, as defined in 42 CFR section 438.114 and H&S section 1317.1(a)(1).</p> <p>OneCare: Those covered inpatient and outpatient services required that are:</p> <ol style="list-style-type: none"> 1. Furnished by a physician qualified to furnish emergency services; and 2. Needed to evaluate or stabilize an Emergency Medical Condition. |

| Term | Definition |
|------------------------------------|---|
| Health Care Operations | Has the meaning given such term in Section 164.501 of Title 45, Code of Federal Regulations including activities including quality assessment and improvement activities, care management, professional review, compliance and audits, health insurance underwriting, premium rating and other activities related to a contract and health benefits, management and administration activities, customer services, resolution of internal grievances, business planning, and development and activities related to compliance with the privacy rule. |
| Member | A beneficiary enrolled in a CalOptima Health program. |
| Payment | Has the meaning in 42 Code of Federal Regulations Section 164.501, including: activities carried out by CalOptima Health including: <ol style="list-style-type: none"> 1. Determination of eligibility, risk adjustments based on Member health status and demographics, billing claims management, and collection activities; 2. Review of health care services regarding medical necessity, coverage under a health plan, appropriateness of care, or justification of charges; and, 3. Utilization review activities including pre-certification, preauthorization, concurrent, or retrospective review of services. |
| Protected Health Information (PHI) | Has the meaning in 45, Code of Federal Regulations Section 160.103, including the following: individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. <p>This information identifies the individual or there is reasonable basis to believe the information can be Used to identify the individual. The information was created or received by Cal Optima or Business Associates and relates to:</p> <ol style="list-style-type: none"> 1. The past, present, or future physical or mental health or condition of a Member; 2. The provision of health care to a Member; or 3. Past, present, or future Payment for the provision of health care to a Member. |
| Provider | <u>Medi-Cal</u> : Any individual or entity that is engaged in the delivery of services, or ordering or referring for those services, and is licensed or certified to do so. <p><u>OneCare</u>: Any Medicare provider (e.g., hospital, skilled nursing facility, home health agency, outpatient physical therapy, comprehensive outpatient rehabilitation facility, end-stage renal disease facility, hospice, physician, non-physician provider, laboratory, supplier, etc.) providing Covered Services under Medicare Part B. Any organization, institution, or individual that provides Covered Services to Medicare members. Physicians, ambulatory surgical centers, and outpatient clinics are some of the providers of Covered Services under Medicare Part B.</p> |
| Required by Law | Has the meaning in 45 Code of Federal Regulations (CFR) Section 164.103 which specifies a mandate contained in law that compels an entity to make a Use or Disclosure of PHI and that is enforceable in a court of law and which are permissible grounds for a covered entity to Use or Disclose PHI under 45 CFR Section 164.512(a) when relevant requirements are met. |

| Term | Definition |
|------|---|
| Use | Has the meaning in 45, Code of Federal Regulations Section 160.103, including the following: the sharing, employment, application, utilization, examination, or analysis of the PHI within an entity that maintains such information. |