



Policy: HH.3024
Title: **Confidentiality of Medical Information Act Compliance**
Department: Office of Compliance
Section: Privacy

CEO Approval: /s/ Michael Hunn 11/19/2024

Effective Date: 11/07/2024
Revised Date: Not Applicable

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

I. PURPOSE

This policy is intended to ensure compliance with the California Confidentiality of Medical Information Act (CMIA).

II. POLICY

- A. In addition to the requirements under the federal Health Insurance Portability Accountability Act (HIPAA) and its implementing regulations, CalOptima Health must protect the confidentiality of patient Medical Information in accordance with the CMIA. CalOptima Health may not share, sell, use for marketing, or otherwise use any Medical Information for any purpose not necessary to providing health care services to a Member or paying for those services unless an exception applies.
- B. The CMIA allows CalOptima Health to disclose Medical Information only as authorized by state or federal law, or as otherwise expressly authorized by a Member.
- C. The CMIA requires CalOptima Health to comply with Confidential Communications Requests from Members and prohibits CalOptima Health from requiring a Member covered under another Member's benefit plan or a minor who can consent to treatment (the non-primary Member) to obtain Authorization from the primary subscriber or another enrollee to obtain Sensitive Services if the individual has the right to consent to care. CalOptima Health may not condition enrollment or coverage on a Member waiving their rights under the CMIA.
- D. The CMIA also requires that CalOptima Health ensure any entities that offer a Reproductive or Sexual Digital Service to CalOptima Health Members comply with the CMIA and that contractors that maintain electronic Medical Information segregate the information from the rest of the Member's record.

III. PROCEDURE

- A. General Disclosures and Authorization: CalOptima Health will not disclose Medical Information unless the Member has provided a valid authorization for disclosure or as permitted or required by law, including:
 - 1. CalOptima Health will disclose Medical Information without authorization as required by a court order, subpoena, or otherwise required by law.

2. CalOptima Health may disclose Medical Information without authorization when necessary for treatment, payment, or health care operations purposes.
- B. Communications Regarding Sensitive Services Provided to non-primary Members:
1. CalOptima Health may not disclose to the primary subscriber, or another enrollee, any Medical Information related to Sensitive Services received by a non-primary Member without express authorization from the non-primary Member.
 2. CalOptima Health must direct all communications regarding Sensitive Services to the non-primary Member's designated alternate mailing address, email address, or telephonic number or, in the absence of such information, to the address or telephone on file in the name of the non-primary Member.
 3. CalOptima Health may not require a non-primary Member to obtain authorization from the primary subscriber or another enrollee for the non-primary Member to obtain Sensitive Services if the non-primary Member has the right to consent to care.
 4. For example, CalOptima Health must not require that a minor 12 years old or older obtain parental consent to obtain outpatient mental health treatment if in the opinion of the treating professional the minor is mature enough to participate intelligently in their care. In addition, the minor may request that CalOptima Health send Communications regarding those mental health or counseling services to a mailing address, email address, or telephone number specified by the minor Member.
- C. Confidential Communications Requests: Members may submit Confidential Communications Requests to CalOptima Health as outlined in CalOptima Health's evidence of coverage and on CalOptima Health's website, and CalOptima Health shall process those requests as follows:
1. Privacy Department shall implement requests received electronically or telephonically within seven (7) calendar days of receipt or mail requests within 14 calendar days of receipt.
 2. The Privacy Department will acknowledge receipt within two (2) business days. CalOptima Health shall also inform the Member within two (2) business days of the status of implementing the request if the Member asks CalOptima Health.
 3. The [responsible department] will copy the Office of Compliance on any and all written communications with Members regarding Confidential Communication Requests.
 4. To the extent readily producible, CalOptima Health will produce Confidential Communications in the form and format requested by the Member.
 5. The Member's Confidential Communications Request shall remain in effect until revoked or replaced by the Member.
 6. CalOptima Health will apply Confidential Communications Requests to all Communications that disclose Medical Information or Provider name and address information related to the Member's receipt of Sensitive Services.
- D. Confidential Information Policy Requests: Members may request a written statement from CalOptima Health that describes how CalOptima Health maintains the confidentiality of Medical Information obtained by and in the possession of CalOptima Health. CalOptima Health shall respond to such requests with a statement that complies with the following:

1. Is in at least 12 point font type.
 2. Describes how CalOptima Health protects the confidentiality of Member Medical Information and informs the Member that any disclosure of Medical Information beyond the provisions of the law is prohibited.
 3. Describes the types of Medical Information that may be collected and the sources that may be used to collect the information, as well as the purposes for which CalOptima Health obtains Medical Information from other health care Providers.
 4. Describes the circumstances under which Medical Information may be disclosed without prior authorization, in accordance with CalOptima Policies HH.3010: Protected Health Information Disclosures Permitted and Required by Law and HH.3015: Member Authorization for the Use and Disclosure of Protected Health Information.
 5. Describes how Members may obtain access to Medical Information created by and in the possession of CalOptima Health, including copies of Medical Information. Members may request Confidential Communications in accordance with CalOptima Health Policy HH.3008: Member Right to Request Confidential Communications.
- E. Reproductive or Sexual Health Digital Service: If CalOptima Health contracts with any entity that provides a Reproductive or Sexual Health Digital Service to CalOptima Health Members for the purpose of allowing Members to manage their information, or for the diagnosis, treatment, or management of medical conditions of Members, that entity is deemed a Provider subject to the CMIA. CalOptima Health shall ensure its contract with that entity requires the entity to comply with the CMIA.
1. For example, a software Provider that provides Members with an application for the Members to track their menstrual cycle is considered a Provider by the CMIA. CalOptima Health must ensure such a software Provider complies with the CMIA.
- F. Abortion Services Information:
1. CalOptima Health shall not knowingly disclose, transmit, transfer, or grant access to Medical Information to an individual in another state that identifies or is related to an individual seeking, obtaining, providing, supporting, or aiding in the performance of an abortion that is lawful in California (Abortion Services), unless such access is:
 - a. Properly authorized under Section III.A of this Policy and clearly states that Medical Information for Abortion Services may be disclosed;
 - b. For payment, claims, and billing purposes;
 - c. To persons reviewing competence or qualifications of health care professionals;
 - d. To persons reviewing health care services with respect to necessity or services, quality of care, or justification of charges;
 - e. To accrediting organizations; or
 - f. For bona fide research purposes, as permitted under California Civil Code, Sections 56.10(c)(2)-(5), (7) and 56.110(a).

2. Notwithstanding Section III.F.1, CalOptima Health shall disclose electronic Medical Information related to Abortion Services:
 - a. At the request of a Member or their authorized representative under the Patient Access to Health Records Act;
 - b. In response to a California or federal court order to the extent clearly stated in the order, if all information about the Member's identity and records are protected from public scrutiny; or
 - c. Where required by federal law, but only to the extent expressly required.

G. Information Segregation and Investigations:

1. CalOptima Health shall ensure any contractor that maintains the electronic Medical Information of CalOptima Health Members complies with the following requirements regarding Sensitive Services:
 - a. Limits access privileges to information systems containing Medical Information related to Gender Affirming Care, abortion, abortion-related services, and contraception (Restricted Information) only to persons authorized to access that specified information;
 - b. Prevents disclosure, access, transfer, transmission, or processing (and provides the ability to automatically disable access) of Restricted Information by persons and entities outside of California; and
 - c. Segregates Restricted Information from the rest of the Member's records.
2. CalOptima Health and any of its contractors that maintain Restricted Information of CalOptima Health Members shall not cooperate with any inquiry or investigation by or provide Medical Information to any individual, agency, or department from another state regarding Abortion Services, unless the request for Restricted Information is authorized, as specified in Section III.F. above. This prohibition also applies to a federal law enforcement agency, to the extent allowed under federal law.
3. For example, if CalOptima Health's care management systems vendor hosts Member Restricted Information data, the care management system vendor must ensure that Restricted Information is segregated from the rest of the Member's record, the system provides access only to those individuals designated to have access to the Restricted Information, and Restricted Information is not accessible to persons or entities outside of California without proper Member authorization.

IV. ATTACHMENT(S)

Not Applicable

V. REFERENCE(S)

- A. CalOptima Health Policy HH.3000: Notice of Privacy Practices
- B. CalOptima Health Policy HH.3008: Member Right to Request Confidential Communications
- C. CalOptima Health Policy HH.3010: Protected Health Information Disclosures Permitted and Required by Law

- D. CalOptima Health Policy HH.3011: Use and Disclosure of Protected Health Information (PHI) for Treatment, Payment, and Health Care Operations
- E. CalOptima Health Policy HH.3015: Member Authorization for the Use and Disclosure of Protected Health Information
- F. CalOptima Health Policy HH.3022: Business Associate Agreements
- G. California Civil Code §§ 56.06(e), 56.10, 56.107, 56.110, and 56.11
- H. California Penal Code § 1543
- I. 45 CFR §§ 164.502(a)(5)(iii)(A), (C); 164.509; and 164.512(d), (e), (f), (g)(1)

VI. REGULATORY AGENCY APPROVAL(S)

None to Date

VII. BOARD ACTION(S)

| Date | Meeting |
|-------------|--|
| 11/07/2024 | Regular Meeting of the CalOptima Health Board of Directors |

VIII. REVISION HISTORY

| Action | Date | Policy | Policy Title | Program(s) |
|---------------|-------------|---------------|---|-----------------------------|
| Effective | 11/07/2024 | HH.3024 | Confidentiality of Medical Information Act Compliance | Medi-Cal OneCare PACE |

IX. GLOSSARY

| Term | Definition |
|-------------------------------------|--|
| Authorization | Has the meaning given such term in 45 CFR Section 164.508 and other federal and state laws imposing more stringent Authorization requirements for the Use and Disclosure of Member PHI e.g. Welfare & Institution Code section 14100.2. |
| Authorized Representative (AR) | Any individual appointed in writing by a competent Member or Potential Member, to act in place or on behalf of the Member or Potential Member for purposes of assisting or representing the Member or Potential Member with Grievances and Appeals, State Fair Hearings, Independent Medical Reviews and in any other capacity, as specified by the Member or Potential Member. |
| Communications | For purposes of this policy and unless otherwise specified, communications subject to this policy include written, verbal, or electronic communications related to the receipt of Sensitive Services, including bills and attempts to collect payment; notices of adverse benefits determinations; explanation of benefits notices; CalOptima Health's request for additional information regarding a claim; a notice of a contested claim; the name and address of a provider, description of services provided, and any other information related to a visit; and any communication from CalOptima Health that contains Medical Information. |
| Confidential Communications Request | For purposes of this policy, this is a request by a Member that communications from CalOptima Health containing Medical Information ("Confidential Communications") be communicated to the Member at a specific mail address, email address, or telephone number, as designated by the Member. Civ. Code § 56.05(c). These requests also apply to communications that disclose a provider's name and address related to receipt of services by the Member the requesting confidential communication. Civ. Code § 56.107(b)(4). |
| Gender Affirming Care | Medically necessary health care or gender affirming mental health care that respects the gender identity of the patient, as experienced and defined by the patient, and may include, but is not limited to: <ol style="list-style-type: none"> 1. Interventions to suppress the development of endogenous secondary sex characteristics; 2. Interventions to align the patient's appearance or physical body with the patient's gender identity; and 3. Interventions to alleviate symptoms of clinically significant distress resulting from gender dysphoria, as defined in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition. Welfare and Institutions Code § 16010.2(b). |
| Medical Information | Any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient's medical history, mental health application information, Reproductive or Sexual Health Application Information, mental or physical condition, or treatment. "Individually Identifiable" means that the Medical Information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the identity of the individual. Civ. Code § 56.05(j). |
| Member | A beneficiary enrolled in a CalOptima Health program. |

| Term | Definition |
|---|---|
| Provider | 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. |
| Reproductive or Sexual Health Application Information | Information about an individual's reproductive health, menstrual cycle, fertility, pregnancy, pregnancy outcome, plans to conceive, or type of sexual activity collected by a reproductive or sexual health digital service, including, but not limited to, information from which one can infer someone's pregnancy status, menstrual cycle, fertility, hormone levels, birth control use, sexual activity, or gender identity. Civ. Code § 56.05(q). |
| Sensitive Services | All health care services related to mental or behavioral health, sexual and reproductive health, sexually transmitted infections, substance use disorder, gender affirming care, and intimate partner violence, and includes services described in Family Code, Sections 6924, 6925, 6926, 6927, 6928, 6929, and 6930, and Health and Safety Code, Sections 121020 and 124260, obtained by a patient at or above the minimum age specified for consenting to the service, in accordance with California Civil Code, Section 56.05(s). |