



Policy: AA.1215
Title: **Public Records Requests and Subpoenas**
Department: CalOptima Health Administrative
Section: Not Applicable

CEO Approval: /s/ Michael Hunn 07/25/2024

Effective Date: 12/01/1996

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

I. PURPOSE

To establish a policy for responding to requests for inspection or copying of CalOptima Health's records under the Public Records Act and/or pursuant to a subpoena.

II. POLICY

- A. CalOptima Health shall provide access to non-exempt, disclosable public records in the custody and control of CalOptima Health to any person (including any natural person, corporation, partnership, firm or association) requesting to inspect or copy them in accordance with Government Code section 7920 *et seq.* (California Public Records Act, hereinafter referred to as the "PRA").
- B. CalOptima Health shall timely respond in an appropriate manner to any lawfully issued subpoena or court order demanding the production of CalOptima Health records.
- C. PRA Request for Inspection/Copying: While a written request is not required, CalOptima Health prefers that all PRA requests for records be in writing so that CalOptima Health can more accurately identify the records sought and process the request more efficiently (Gov. Code §7922.505). PRA requests can be made on CalOptima Health's Request for Inspection/Copying Form, which may be obtained at CalOptima Health's office through the Clerk of the Board, or a PRA request may be made orally or in writing to the Clerk of the Board with the following information:
1. The name of the person;
 2. The address of the person;
 3. The telephone number and/or e-mail of the person;
 4. The date of inspection (when applicable);
 5. The exact description of the records which the person desires to inspect or copy;
 6. Whether the person desires a copy of such records; and

7. Whether the person has specific authorization to inspect or copy records (when such authorization is required pursuant to Federal and/or State law and/or CalOptima Health Policies HH.3003: Verification of Identity for Disclosure of Protected Health Information (PHI) and HH.3010: Protected Health Information (PHI) Disclosures Required by Law). When specific written authorization is required to inspect the subject records, a complete and fully executed copy of such written authorization must accompany the request and shall be attached thereto.
- D. Records Not Subject to Inspection/Copying under the PRA: Every person has the right to inspect any public record unless an exemption applies to the public record. Exempted public records will not be subject to the right of inspection and copying except where CalOptima Health determines reasonably segregable portions are available. The following non-exclusive list summarizes common exemptions or categories of records that are not subject to inspection or copying under the PRA:
1. Records of the proceedings or other records of an organized CalOptima Health committee having the responsibility of evaluation and improvement of the quality of care rendered in the CalOptima Health program. (Gov. Code § 7930.155 and Health & Safety Code §1370.)
 2. Records pertaining to pending litigation to which CalOptima Health is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the California Government Code, until such litigation or claim has been finally adjudicated or otherwise settled. (Gov. Code § 7927.200.)
 3. Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy of the individual or individuals concerned. (Gov. Code § 7927.700.)
 4. Records of complaints to, or investigations conducted by, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by CalOptima Health for correctional, law enforcement, or licensing purposes. (Gov. Code § 7923.600.)
 5. Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination. (Gov. Code § 7929.6056254(g).)
 6. The contents of real estate appraisals, engineering or feasibility estimates, and evaluations made for or by CalOptima Health relative to the acquisition of property, or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all contract agreements obtained. (Gov. Code § 7928.7056254(h).)
 7. Records which are exempted or prohibited from disclosure pursuant to provisions of federal or state law, including but not limited to, provisions of the California Evidence Code relating to privilege (Gov. Code § 7927.705), Evidence Code section 1157, Welfare and Institutions Code section 14087.58, subsection (b), the attorney-client privilege, and the attorney work product doctrine.
 8. Preliminary drafts, notes, or other memorandum between agencies or departments, that are not retained by CalOptima Health in the ordinary course of business, if the public interest in withholding such records outweighs the public interest in disclosure. (Gov. Code § 7927.500.)

9. Statements of personal worth or personal financial data required by any licensing agency and filed by a person with the licensing agency to establish their personal qualification for the license, certificate, or permit applied for. (Gov. Code § 7925.005.)
 10. Records of CalOptima Health and state agencies related to activities governed by Articles 2.6, 2.8, or 2.91 of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code pertaining to Medi-Cal provider contracting, which reveal deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or which provide instruction, advice, or training to Employees. (Gov. Code § 7926.220.)
 11. Any other category of records exempt from disclosure pursuant to the PRA or otherwise prohibited by law.
- E. Waiver of Exemption under the PRA: If CalOptima Health discloses a public record which is otherwise exempt from disclosure under the California PRA, the disclosure may, with limited exceptions, constitute a waiver of the exemption otherwise applicable to such record.
- F. Discretionary Withholding of Records: In addition to the limitations upon disclosure of public records not otherwise exempt, CalOptima Health may, in its discretion, withhold inspection of any records when CalOptima Health determines that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record. Such discretion shall be exercised by CalOptima Health through the Chief Executive Officer, whose decision shall be final unless overruled by the Board of Directors. (Gov. Code § 7922.000.)
- G. Subpoenas for Production of Business Records and/or Subpoenas for Personal Appearance and Production of Documents, Electronically Stored Information, and Things:
1. Subpoenas shall only be accepted at CalOptima Health's main office located at 505 City Parkway West, Orange, CA 92868. Subpoenas that are directly related to CalOptima Health's business will be accepted in accordance with the procedures set forth below. Subpoenas that are not directly related to CalOptima Health business or CalOptima Health Members should not be accepted.
 2. If a subpoena is served on CalOptima Health in an action in which CalOptima Health and/or a CalOptima Health Employee, in their capacity as a CalOptima Health Employee, is named as a party, legal counsel shall be contacted immediately.
 3. Executive Management, or their designee, is responsible for searching for and compiling documents and electronic records responsive to a subpoena to CalOptima Health that is within the custody and control of their respective departments. Executive Management shall coordinate the release of records responsive to a subpoena with legal counsel.
 4. Employees appearing at a deposition, hearing, trial, or other legal proceeding pursuant to a subpoena, on behalf of and/or at the request of CalOptima Health, shall be granted paid time off consistent with applicable laws for whatever time such appearances cause the Employee to be absent from work.
- H. Records Subject to Inspection or Copying Only With Authorization: Any records relating to Members (including, but not limited to, Protected Health Information (PHI), Medical Records that indicate hospital admission and discharge, medical treatment, diagnosis, and other care or services)

shall only be made available for inspection or copying, whether in response to a PRA request or a subpoena, under the following conditions and in accordance with related CalOptima Health policies and procedures and subject to special protections under state and federal laws afforded to specialized services (e.g., substance abuse, mental health, HIV/AIDS):

1. Upon presentation of a complete and fully executed written authorization that satisfies the requirements of the Confidentiality of Medical Information Act (California Civil Code Section 56, *et seq.*) and the Health Insurance Portability and Accountability Act (HIPAA) (Title 42, United States Code, Section 1320d), and the regulations adopted thereunder, including, but not limited to, the requirement that the authorization be executed by an adult Member, by the guardian or conservator of the Member's person or estate, or, in the case of a minor, by a parent, legal guardian, or other person who is legally authorized to have custody or care of such minor, or by the personal representative or beneficiary of a deceased Member and is in accordance with CalOptima Health Policies HH.3003: Verification of Identity for Disclosure of Protected Health Information (PHI) and HH.3010: Protected Health Information (PHI) Disclosures Required by Law.
2. Upon request by a Member consistent with CalOptima Health's policies and procedures and all applicable laws;
3. Upon presentation of a written order issued by a judge or magistrate of a Court of the State of California or the United States of America that specifically commands CalOptima Health to disclose specified records; or
4. As authorized by law or regulation with appropriate safeguards, including but not limited to, disclosure as part of litigation.

I. Fee for Copying and Certifying Records:

1. CalOptima Health shall recover the cost of producing records to the extent allowed by law in response to Subpoenas and PRA requests. When the person desires a copy of an identifiable, disclosable, non-exempt public record, or records pursuant to a Subpoena, the record shall be copied (if it can be so done with the equipment then available at CalOptima Health)for:
 - a. A charge of ten cents (\$.10) per page for standard reproduction of documents 8 1/2 by 14 inches or less, and actual costs for reproduction of oversized documents or documents which require special processing;
 - b. Statutory costs;
 - c. Actual costs of copies of other records (e.g., audio reproduction); and/or
 - d. Postal charges, where applicable.
2. CalOptima Health will provide an estimate of the cost of copying the requested records, and the person requesting copies of the records shall deposit the amount of such estimate with CalOptima Health prior to such copying.
3. The copying of such records shall be accomplished within a reasonable amount of time after the request thereof and receipt of the deposit of the copying costs, without disruption of the normal business of CalOptima Health. The person shall be informed of the time necessary to accomplish such copying. CalOptima Health may, in its discretion, require the requesting party

to submit to CalOptima Health the total amount of allowable fees, if more than the deposit amount, before providing a copy of the record.

4. When the person requests a certification of copies of such records, a fee of two dollars (\$2.00) shall be paid for such certification.
5. Records Not To Be Removed: Where a request seeks only the inspection of records, but not copies of the records, the person(s) inspecting such records may not remove the records from the place of inspection for any purposes whatsoever without an order from a court of competent jurisdiction.

III. PROCEDURE

A. PRA Requests:

1. CalOptima Health's Clerk of the Board (Clerk) shall be responsible for the review of all requests for inspection/copying of public records. Any CalOptima Health Employee who receives an oral or written request for public records shall forward the request to the Clerk. The Clerk shall maintain a system for tracking all requests for records.
2. Records are subject to inspection and copying pursuant to the PRA and may be inspected at all times during CalOptima Health's regular business hours, Monday through Friday (except on holidays) from 8:30 a.m. to 5:00 p.m. at CalOptima Health's main office located at 505 City Parkway West, Orange, CA 92868. CalOptima Health will make reasonable efforts to respond promptly to a request for public records; however, if additional time is needed, as permitted under the PRA, CalOptima Health may extend the time to respond and notify the requestor in writing accordingly.
3. Upon receipt of an oral or written request for public records, or a Request for Inspection/Copying of Records Form, the Clerk shall send an Acknowledgment Letter to the person requesting such public records.
4. The Clerk shall promptly review the request under the PRA and determine, in consultation with legal counsel, whether the request seeks disclosable, non-exempt public records in the custody and control of CalOptima Health.
5. Where the requested records are not maintained by the Clerk, the Clerk shall determine which CalOptima Health department(s) maintain(s) and/or has/have custody of the requested records, and the Clerk will forward the PRA request to the appropriate CalOptima Health department(s).
6. Executive Management is responsible for promptly searching for and compiling documents and electronic records responsive to the subpoena that are within the custody and control of their respective departments and forwarding such documents in a timely manner to the Clerk for further processing and release, if appropriate.
 - a. The Clerk shall, in consultation with Executive Management, to the extent reasonable under the circumstances: (1) assist the person requesting records to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

- b. If any question exists as to whether any record, or portion of any record, is exempt from disclosure, it is the responsibility of Executive Management, or their designee, to submit a request to legal counsel promptly to ensure compliance with Cal. Gov. Code section 7922.535(a).
 - c. The Chief Executive Officer, in consultation with legal counsel, shall make the final decision as to whether or not any record is exempt from disclosure pursuant to the balancing test in Government Code section 7922.000.
 - 7. Within ten (10) calendar days after receiving the PRA request, the Clerk shall respond in writing as to whether the request, in whole or in part, seeks copies of disclosable, non-exempt public records in the possession of CalOptima Health, and the reasons therefor.
 - 8. In the event an extension is necessitated by “unusual circumstances” as described below, the Clerk shall provide written notice within ten (10) calendar days after receiving the PRA request to the person requesting the records setting forth the reasons for the extension, and the date on which a determination is expected to be made. Any such extension shall not exceed fourteen (14) calendar days. As used in this paragraph, “unusual circumstances” means:
 - a. The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;
 - b. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records;
 - c. The need for consultation, which shall be conducted with practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein; or
 - d. The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.
 - 9. Disclosure of Requested Records: If CalOptima Health determines that the request seeks disclosable, non-exempt public records, in whole or in part, CalOptima Health shall provide a written determination and the estimated date and time when the records will be made available. Any portion of a record that can be reasonably segregated shall be made available after deletion of the portions that are exempted by law. To the extent feasible, records shall be made promptly available for inspection, and if copies are requested, upon payment of any applicable copying fees as described above. In CalOptima Health’s sole discretion, responsive records may be made available electronically without copying fees via secure means.
 - 10. Denial of Request: If CalOptima Health determines that it will deny a request for records, in whole or in part, CalOptima Health shall provide a written determination including the justification for the denial along with names and titles or positions of each person responsible for the denial. CalOptima Health shall indicate the reason for denial of any record by demonstrating that the record requested and withheld is either exempt from disclosure, that the public interest served by not making the record public outweighs the public interest served by the disclosure of such record, the record does not exist, and/or that there is no such record in the custody and control of CalOptima Health.
- B. Subpoenas Served on CalOptima Health: While a subpoena is a legal document commanding production of records, it is not an order of the court declaring that the particular records requested are legally subject to disclosure. Records requested pursuant to a subpoena may be subject to an

exemption from disclosure by reason of the existence of a privilege, statutory provision or other legal basis. Therefore, CalOptima Health may not be compelled to disclose all documents requested pursuant to a subpoena. Upon receipt of a properly served subpoena directly related to CalOptima Health's business, the following procedures shall be followed:

1. All incoming subpoenas shall be promptly timestamped upon receipt.
2. Forward a copy of the timestamped subpoena to legal counsel.
3. Legal counsel shall maintain a log and filing system of all subpoenas received. The log shall contain, at a minimum, entries reflecting: (a) when the subpoena was received; (b) how the subpoena was received (by mail or personal delivery); (c) the type of subpoena; and (d) the date specified on the subpoena when a response is required.
4. For a subpoena in a lawsuit where CalOptima Health and/or a CalOptima Health Employee, in their capacity as an Employee, is named as a party, consult with legal counsel concerning the appropriate and proper response.
5. For subpoenas in any other action where CalOptima Health is not involved in litigation and in which business records are being sought from CalOptima Health without requiring the personal attendance of the Custodian of Records:
 - a. Determine whether the subpoena seeks production of the personal records of a CalOptima Health Employee or records related to a CalOptima Health Member containing PHI.
 - i. If the subpoena seeks personal records of a CalOptima Health Employee, the subpoena must be accompanied by a Notice to Consumer along with proof that the Notice to Consumer was served on the Employee or written authorization from the Employee for the release of the records. Contact the party issuing the subpoena immediately if the required attachments to the subpoena are not included.
 - ii. If the subpoena seeks records related to a CalOptima Health Member containing PHI, the subpoena must be accompanied by a complete and fully executed written authorization which satisfies the requirements of the Confidentiality of Medical Information Act (California Civil Code Section 56, *et seq.*) and the Health Insurance Portability and Accountability Act (HIPAA) (Title 42, United States Code, Section 1320d), and the regulations adopted thereunder (including, but not limited to, Title 45, Code of Federal Regulations, Section 164.512(e)), along with a copy of a government-issued identification which contains, at a minimum, the name of the person requesting the PHI and his or her signature; or a notarized signature. If the subpoena does not meet these requirements, contact legal counsel immediately to determine the appropriate response.
 - b. Executive Management is responsible for searching for and compiling documents and electronic records responsive to the subpoena that are within the custody and control of their respective departments and forwarding such documents to legal counsel for review and appropriate redaction prior to the release of the records.

Prior to releasing records, Executive Management, or their designee, shall: complete and sign a declaration or affidavit certifying the records; copy and/or produce the records on the date and in the manner specified in subpoena; include a bill for the cost of copying and/or preparing the documents as provided above; and coordinate the release of records responsive to a subpoena with legal counsel.

6. If only portions of any requested records may be disclosed or inspected, the disclosable portions shall be segregated from the non-disclosable portions, and the segregated non-disclosable portions shall be withheld unless and until a court of competent jurisdiction orders their production.
7. For subpoenas requiring the personal appearance of a specific CalOptima Health Employee, excluding subpoenas directed to a Custodian of Record or Person Most Knowledgeable, the subpoena must be personally served on the person named in the subpoena. If CalOptima Health is not a party to the action and personal appearance is required, the subpoena must be accompanied by the two hundred seventy five (\$275) dollars statutory witness fee, as provided under Government Code section 68096.1, made payable to CalOptima Health. No other CalOptima Health Employee may accept service for a person specifically named in a subpoena. CalOptima Health Employees shall not disclose the home address, telephone number or any other personal information of the Employee named in the subpoena to the process server.
8. If a subpoena is improperly served, legal counsel shall immediately contact the party who caused the subpoena to be served and advise that party of the improper service.
9. Any Employee served with a subpoena for personal appearance at a deposition or at a hearing, trial or other legal proceeding, in their capacity as an Employee of CalOptima Health, should immediately notify their supervisor, as well as legal counsel.
10. In the event CalOptima Health or a party to the lawsuit files a motion to quash the subpoena, objections or a protective order, CalOptima Health shall not produce the requested or disputed records until CalOptima Health receives a court order or agreement between the parties directing CalOptima Health to do so.

IV. ATTACHMENT(S)

- A. Request for Inspection/Copying Form
- B. Acknowledgment Letter

V. REFERENCE(S)

- A. CalOptima Health Policy HH.3003: Verification of Identity for Disclosure of Protected Health Information (PHI)
- B. CalOptima Health Policy HH.3010: Protected Health Information (PHI) Disclosures Required by Law
- C. CalOptima Health Policy HH.3015: Member Authorization for the Use and Disclosure of Protected Health Information (PHI)
- D. California Public Records Act, California Government Code, Section 79200 *et. seq.* (Inspection of Public Records)
- E. California Government Code, Section 68096.1
- F. California Welfare and Institutions Code, Section 14100.2
- G. Confidentiality of Medical Information Act, California Civil Code, Section 56 *et. seq.*
- H. Health Insurance Portability and Accountability Act (HIPAA)
- I. Title 42, United States Code, Section 1320d
- J. Title 45, Code of Federal Regulations, Section 164.512(e)

VI. REGULATORY APPROVAL(S)

None to Date

VII. BOARD ACTION(S)

Date	Meeting
12/04/2014	Regular Meeting of the CalOptima Board of Directors

VIII. REVISION HISTORY

Action	Date	Policy	Policy Title	Program(s)
Effective	12/01/1996	AA.1215	Public Records Request	Administrative
Revised	06/01/2007	AA.1215	Public Records Request	Administrative
Revised	03/01/2012	AA.1215	Public Records Request	Administrative
Revised	12/04/2014	AA.1215	Public Records Requests and Subpoenas	Administrative
Revised	01/01/2016	AA.1215	Public Records Requests and Subpoenas	Administrative
Revised	10/01/2022	AA.1215	Public Records Requests and Subpoenas	Administrative
Revised	09/01/2023	AA.1215	Public Records Requests and Subpoenas	Administrative
Revised	07/01/2024	AA.1215	Public Records Requests and Subpoenas	Administrative

IX. GLOSSARY

Term	Definition
Employee	For purposes of this policy, includes, but is not limited to, all full-time and part-time regular CalOptima Health Employees, all temporary Employees, interns, CalOptima Health Board members, and applicable contractors and consultants.
Member	A beneficiary enrolled in a CalOptima Health program.