



Policy: HH.3010
Title: **Protected Health Information Disclosures Permitted and Required by Law**
Department: Office of Compliance
Section: Privacy

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

Effective Date: 04/01/2003

Revised Date: 11/07/2024

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

I. PURPOSE

This policy describes the manner in which CalOptima Health Uses and Discloses Protected Health Information (PHI) as permitted by HIPAA and as required by law.

II. POLICY

- A. CalOptima Health may not Use or Disclose PHI, except as permitted, or required, by HIPAA.
- B. CalOptima Health shall Disclose PHI:
 - 1. To the Member when requested under, and as required by, the Member's access and accounting rights set forth in Title 45, Code of Federal Regulations (CFR), Sections 164.524 and 164.528(i); or
 - 2. When required by the Secretary of the Department of Health and Human Services (HHS) to investigate, or determine, CalOptima Health's compliance with HIPAA.
- C. CalOptima Health may Use or Disclose PHI to the extent that such Use or Disclosure is required by law and the Use or Disclosure is limited to the relevant requirements of such law and complies with HIPAA requirements specifically related to such Uses or Disclosures, as provided in Title 45 CFR Section 164.512(a)(2).
- D. CalOptima Health shall comply with the Welfare and Institutions Code, Section 14100.2 and Title 22, California Code of Regulations (CCR), Section 51009 in making permitted Uses or Disclosures required by law under Title 45 CFR Section 164.512(a). Compliance with these laws extends beyond Member PHI and includes all confidential Member information (e.g., the fact that the Member is a Medi-Cal/Medicare recipient). In the event that CalOptima Health makes a Use or Disclosure required by law, it must first determine that the Use or Disclosure is for the purpose directly connected with the administration of the Medi-Cal/Medicare program.
- E. Except for Uses and Disclosures described under Section III.B., Uses and Disclosures of Member PHI sought, demanded, or otherwise requested by any non-Member party by any means including through subpoenas, document requests, court orders, informal inquiries, etc. that fall within this Policy shall be immediately referred to CalOptima Health's Legal Counsel

for review and handling.

- F. CalOptima Health will not Use or Disclose PHI related to lawful Reproductive Health Care for the purpose of:
1. Conducting a criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating Reproductive Health Care;
 2. Imposing criminal, civil, or administrative liability on any person for the mere act of seeking, obtaining, providing, or facilitating Reproductive Health Care; or
 3. To identify any person for any purpose previously described (each a prohibited purpose) without Member authorization, in accordance Title 45 CFR, Section 164.502(a)(5)(iii).

III. PROCEDURE

A. HIPAA required Uses and Disclosures

1. Member requests involving the Use or Disclosure of PHI under the Member's HIPAA access and accounting rights shall be governed by CalOptima Health Policies HH.3001: Member Access to Designated Record Set and HH.3005: Member Request for an Accounting of Disclosures.
2. If CalOptima Health receives a request from Department of Health and Human Services (DHHS) for Member PHI to investigate, or determine, CalOptima Health's compliance with HIPAA, such requests, or demands, shall be immediately referred to CalOptima Health's Privacy Officer. CalOptima Health's Privacy Officer shall notify CalOptima Health's Legal Counsel of such requests and seek guidance in order to comply with such requests.

B. Permitted Uses and Disclosures required by Law

1. CalOptima Health shall comply with requirements to maintain the confidentiality of all types of information concerning a Member which information shall not be open for examination, except as directly connected with the administration of CalOptima Health programs.
2. Purposes directly connected to the administration of the CalOptima Health's programs encompasses those administrative activities and responsibilities in which the Centers for Medicare and Medicaid (CMS) and/or the Department of Health Care Services (DHCS) and CalOptima Health are required to engage in order to ensure effective program operations including, without limitation:
 - a. Establishing eligibility and methods of reimbursement;
 - b. Determining the amount of medical assistance;
 - c. Providing services;
 - d. Conducting or assisting in investigations, prosecution, or civil or criminal proceedings related to the administration of CalOptima Health's programs; and
 - e. Conducting or assisting a legislative investigation, or audit, related to the administration of CalOptima Health's programs.

3. CalOptima Health may Disclose Member confidential information including PHI and other identifying information, without the Member's Authorization only if and to the extent that CalOptima Health first determines that the Disclosure is directly related to the administration of CalOptima Health's programs and is otherwise permitted under Welfare & Institutions Code Section 14100.2 and Title 22, California Code of Regulations, 51009. The Disclosure must also meet the following requirements, as applicable to the Use or Disclosure:
- a. In the course of any judicial proceeding, in response to a court order, provided that the PHI Disclosed is limited to that specifically authorized by the court order.
 - b. In the course of any administrative proceeding, in response to an order of an administrative tribunal, provided that the PHI Disclosed is limited to that specifically authorized by the administrative tribunal order.
 - c. In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal if:
 - i. In connection with a state civil action, or proceeding, and certain administrative proceedings, the party seeking the PHI by civil subpoena duces tecum has complied with the service and notice requirements of California Code of Civil Procedure (CCP) Section 1985.3, which requires actual notice to the individual. In such cases, CalOptima Health shall examine the subpoena for compliance with CCP Section 1987.3; or
 - ii. In cases where CCP Section 1985.3 is not applicable, CalOptima Health has received satisfactory assurance as defined by HIPAA from the party seeking the PHI that it has notified the Member that is the subject of the PHI, with enough information about the litigation, or proceeding, so that the Member can raise an objection to the court or administrative tribunal; and the time for the Member to raise an objection with the court or tribunal has expired, and that there were no objections, or all objections were resolved by the court of administrative tribunal, and the PHI requested is consistent with that resolution. In such cases, CalOptima Health shall review the written statement and accompanying documentation submitted by the party seeking the PHI to determine compliance with these requirements; or
 - iii. CalOptima Health receives satisfactory assurance from the party seeking the PHI that the parties to the dispute, or proceeding, have agreed to a qualified protective order, within the meaning of Title 45 CFR, Section 164.512(e), and have presented it to the court or administrative tribunal, or the party seeking the PHI provides proof that a qualified protective order, within the meaning of Title 45, CFR Section 164.512(e), has been issued by the court, or administrative tribunal. In such cases, CalOptima Health shall review the written statement and accompanying documentation submitted by the party seeking the PHI to determine compliance with these requirements.
 - d. In compliance with and as limited by the relevant requirements of an administrative request, including an administrative subpoena or summons, a civil or authorized investigative demand, or a similar process authorized under law, provided that:
 - i. The information sought is relevant and material to a legitimate law

- enforcement inquiry;
 - ii. The request is specific, and limited in scope to the extent reasonable for which the information is sought; and
 - iii. De-identified information could not reasonably be Used.
 - e. In compliance with, and as limited by, the relevant requirements of a court-ordered search warrant, or a grand jury subpoena;
 - f. For other law enforcement purposes such as:
 - i. Limited information for identification and location purposes;
 - ii. A law enforcement official's request for information related to victims of a crime;
 - iii. About a person who has died to alert law enforcement of the death, if the death is suspected to have resulted from criminal conduct; and
 - iv. To report crimes in emergencies.
 - v. Disclosures under this Section shall comply with the applicable provisions of Title 45 CFR Section 164.512(f)(2) and any relevant State laws that are more protective of the individual.
 - g. Disclosures about victims of Abuse, neglect, or domestic violence are addressed in CalOptima Health Policies GG.1320: Elder or Dependent Adult Abuse Reporting and GG.1706: Child Abuse Report.
 - h. Other circumstances when specifically required by law provided that such Uses and Disclosures are in compliance with such law and limited to the relevant requirements of such law.
4. CalOptima Health will require an attestation for a Use or Disclose of Reproductive Health Care related PHI for a non-prohibited purpose if the requested release of Reproductive Health Care-related information is for: (i) health oversight activities under Title 45 CFR Section 164.512(d); (ii) judicial or administrative proceedings under Title 45 CFR Section 164.512(e); (iii) disclosures for law enforcement purposes under Title 45 CFR Section 164.512(f); or (iv) disclosures about decedents to coroners and medical examiners under Title 45 CFR Section 164.512(g)(1). The attestation will comply with the following requirements:
- a. The attestation will be in plain language and include the following elements:
 - i. A description of the information requested that identifies either:
 - a) The name of the individual(s) whose PHI is sought, if practicable; or
 - b) A description of the class of individuals whose PHI is sought.
 - ii. A name or other specific identification of the person(s), or class of persons, that are requested to make the Use or Disclosure (i.e., CalOptima Health).

- iii. A name or other specific identification of the person(s), or class of persons, to whom the Use or Disclosure is made.
 - iv. A clear statement that the Use or Disclosure is not for a prohibited purpose.
 - v. A statement that a person may be subject to criminal penalties pursuant to Title 42 United States Code (USC) 1320d-6 if that person knowingly and in violation of HIPAA obtains individually identifiable health information relating to an individual or discloses individually identifiable health information to another person.
 - vi. A signature (either electronic or handwritten) of the person requesting the PHI and a date of signature. If the attestation is signed by a representative of the person requesting the information, a description of such representative's authority to act for the person must also be provided.
- b. The attestation must not contain statements or other information not required by Title 45 CFR Section 164.509.
 - c. CalOptima Health will immediately stop any Uses or Disclosures made pursuant to an attestation if it discovers information reasonably showing that any representation in the attestation was materially false, leading to a Use or Disclosure for a prohibited purpose.
- 5. State and Federal laws governing Uses and Disclosures required by law including those related to Disclosure of PHI to law enforcement are complex and may implicate multiple laws relevant to the particular circumstances. In responding to any requests, demands, orders or requests under Section III.B.3., CalOptima Health shall also comply with state and federal laws governing specially protected categories of PHI including mental health and developmental disability information, HIV test results, substance Abuse records, and psychotherapy notes.
 - 6. CalOptima Health shall also comply with other state requirements relevant to the release of PHI in the context of civil and criminal state and federal proceedings, or to law enforcement.
 - 7. All Uses and Disclosures of Member PHI and/or other confidential information sought, demanded, or otherwise requested by any non-Member party shall be immediately referred to CalOptima Health's Legal Counsel for review and handling.
 - 8. All Uses and Disclosures made under this policy shall be referred to the Privacy Officer and shall be recorded, in accordance with CalOptima Health Policy HH.3006: Tracking Disclosures of Protected Health Information.

IV. ATTACHMENT(S)

- A. Attestation Regarding Requested Use or Disclosure of Protected Health Information Potentially Related to Reproductive Health Care

V. REFERENCE(S)

- A. CalOptima Health Contract with the Centers for Medicare & Medicaid Services (CMS) for Medicare Advantage

- B. CalOptima Health Contract with the Department of Health Care Services (DHCS) for Medi-Cal
- C. CalOptima Health PACE Program Agreement
- D. CalOptima Health Compliance Plan
- E. CalOptima Health Policy GG.1320: Elder or Dependent Adult Abuse Reporting
- F. CalOptima Health Policy GG.1706: Child Abuse Report
- G. CalOptima Health Policy HH.3001: Member Access to Designated Record Set
- H. CalOptima Health Policy HH.3005: Member Request for an Accounting of Disclosures
- I. CalOptima Health Policy HH.3006: Tracking Disclosures of Protected Health Information
- J. California Code of Civil Procedure §1985.3 & §1987.3
- K. Civil Code §56.30(b)
- L. Title 22, California Code of Regulations (C.C.R.), §51009
- M. Title 45, Code of Federal Regulations, §§164.501; 164.502(a), (b); 164.509; 164.512(a), (c), (e) and (f); 164.524 and 164.528(i) or (ii)
- N. Welfare & Institutions Code, §14100.2
- O. Title 42 United States Code (USC) 1320d-6

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
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
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.3010	Protected Health Information Disclosures Required by Law	Medi-Cal
Revised	07/01/2007	HH.3010	Protected Health Information Disclosures Required by Law	Medi-Cal
Revised	09/01/2015	HH.3010	Protected Health Information Disclosures Required by Law	Medi-Cal
Revised	12/01/2016	HH.3010	Protected Health Information Disclosures Required by Law	Medi-Cal OneCare OneCare Connect PACE
Revised	12/07/2017	HH.3010	Protected Health Information Disclosures Required by Law	Medi-Cal OneCare OneCare Connect PACE
Revised	12/06/2018	HH.3010	Protected Health Information Disclosures Required by Law	Medi-Cal OneCare OneCare Connect PACE

Action	Date	Policy	Policy Title	Program(s)
Revised	12/05/2019	HH.3010	Protected Health Information Disclosures Required by Law	Medi-Cal OneCare OneCare Connect PACE
Revised	12/03/2020	HH.3010	Protected Health Information Disclosures Required by Law	Medi-Cal OneCare OneCare Connect PACE
Revised	12/20/2021	HH.3010	Protected Health Information Disclosures Required by Law	Medi-Cal OneCare OneCare Connect PACE
Revised	12/31/2022	HH.3010	Protected Health Information Disclosures Required by Law	Medi-Cal OneCare PACE
Revised	09/01/2023	HH.3010	Protected Health Information Disclosures Required by Law	Medi-Cal OneCare PACE
Revised	11/07/2024	HH.3010	Protected Health Information Disclosures Permitted and Required by Law	Medi-Cal OneCare PACE

1 IX. GLOSSARY
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Term	Definition
Abuse	<p><u>Medi-Cal</u>: A Provider practice that is inconsistent with sound fiscal, business, or medical practice, and results in an unnecessary cost to CalOptima Health and the Medi-Cal program, or in reimbursement for services that are not Medically Necessary or that fail to meet professionally recognized standards for health care. It also includes Member practices that result in unnecessary cost to CalOptima Health and the Medi-Cal program.</p> <p><u>OneCare</u>: A Provider practice that is inconsistent with sound fiscal, business, or medical practice, and results in an unnecessary cost to CalOptima Health and the OneCare program, or in reimbursement for services that are not Medically Necessary or that fail to meet professionally recognized standards for health care. It also includes Member practices that result in unnecessary cost to CalOptima Health and the OneCare program.</p>
Centers for Medicare & Medicaid Services (CMS)	The federal agency under the United States Department of Health and Human Services responsible for administering the Medicare and Medicaid programs.
Department of Health Care Services (DHCS)	The California Department of Health Care Services, the State agency that oversees California's Medicaid program, known as Medi-Cal.
Disclosure	Has the meaning in 45, Code of Federal Regulations Section 160.103 including the following: the release, transfer, provision of access to, or divulging in any manner of information outside of the entity holding the information.
Health Insurance Portability and Accountability Act (HIPAA)	The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, was enacted on August 21, 1996. Sections 261 through 264 of HIPAA require the Secretary of the U.S. Department of Health and Human Services (HHS) to publicize standards for the electronic exchange, privacy and security of health information as subsequently amended.
Member	A beneficiary enrolled in a CalOptima Health Program.
Protected Health Information (PHI)	<p>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> <p>This information identifies the individual or there is a reasonable basis to believe the information can be Used to identify the individual. The information was created or received by CalOptima Health 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.
Reproductive Health Care	Has the meaning in Title 45 (Code of Federal Regulations) CFR, Section 160.103, including the following: health care, as defined at Title 45 CFR, Section 160.103, that affects the health of an individual in all matters relating to the reproductive system and to its functions and processes.

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Term	Definition
Use	Has the meaning in Title 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.