



Policy: HH.3015  
Title: **Member Authorization for the Use and Disclosure of Protected Health Information**  
Department: Office of Compliance  
Section: Privacy

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

Effective Date: 04/01/2003  
Revised Date: 10/01/2024

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

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## I. PURPOSE

This policy describes the circumstances and process for obtaining a Member's (or their Personal Representative's) Authorization for the Use and Disclosure of a Member's Protected Health Information (PHI).

## II. POLICY

- A. CalOptima Health shall only Use or Disclose a Member's PHI pursuant to a written Authorization from the Member, or the Member's Personal Representative, unless otherwise permitted, or required, by the Health Insurance Portability and Accountability Act (HIPAA) and other applicable federal and state laws.
- B. CalOptima Health will not condition Treatment, Payment, enrollment, or benefits eligibility on an individual granting an Authorization.
- C. CalOptima Health shall obtain, review, and confirm that it has a valid Authorization from the Member, or the Member's Personal Representative, in accordance with HIPAA, other applicable federal and state laws, and this policy prior to a Use or Disclosure of PHI that requires an Authorization.
- D. CalOptima Health may Use and Disclose a Member's PHI without a Member's Authorization for Treatment, Payment and Health Care Operations as permitted by HIPAA and other applicable federal and state laws pursuant to CalOptima Health Policies HH.3010 Protected Health Information Disclosures required by Law and HH.3011: Use and Disclosures of Protected Health Information (PHI) for Treatment, Payment, and Health Care Operations.
- E. Uses and Disclosures involving Member PHI that has been properly De-Identified, pursuant to the requirements in Title 45, Code of Federal Regulations, Section 164.514, do not require a Member's Authorization.

## III. PROCEDURE

- A. All valid Authorizations shall contain specified core elements and requirements, in accordance with Title 45, Code of Federal Regulations, Section 164.508(c) and California Civil Code, Section 56.11. A completed CalOptima Health Authorization Form for Disclosure of PHI must include the

following required elements in compliance with Title 45, Code of Federal Regulations, Section 164.508(c) and California Civil Code, Section 56.11:

1. Be handwritten by the person who signs it or is typed in a typeface no smaller than fourteen (14) point font;
  2. A description of the information to be Used or Disclosed;
  3. The name of the person or organization that will Use or Disclose the PHI;
  4. The name of the person or organization that will receive the PHI;
  5. Identifies the Uses and limitations on Uses for which the PHI will be disclosed (except for requests by a Member, which can indicate “at Member’s request” without further explanation);
  6. The specific expiration date or expiration event;
  7. Includes the Member’s or their Personal Representative’s signature and the date. If the Authorization is signed by a Member’s Personal Representative, a description of such representative’s authority to act for the Member must also be provided. (*e.g.*, parent, power of attorney for health care, court-appointed guardian, etc.); and
  8. In addition to the requirements above, the following statements must also be included in the Authorization;
    - a. A statement that the Member has the right to revoke the Authorization, in writing, and any exceptions to this right;
    - b. A statement that CalOptima Health will not condition Treatment, or Payment, on the Member signing the Authorization request;
    - c. A statement informing the Member about the potential for information to be redisclosed and no longer protected by the state or federal privacy rule;
    - d. A statement that the Member can refuse to sign the Authorization;
    - e. A statement that the Member is entitled to a copy of the signed Authorization. A copy of the signed Authorization must be given to the Member; or
    - f. A statement when any Disclosure will result in either direct, or indirect, Payment to CalOptima Health from the receiver of the PHI.
- B. All Uses and Disclosures made pursuant to an Authorization must be consistent with the Authorization.
- C. An Authorization shall be considered invalid if the document submitted contains any of the following defects:
1. The expiration date has passed;
  2. The Authorization does not contain all the required elements;

3. The Authorization is known by CalOptima Health to have been revoked;
  4. The Authorization is combined with any other document in a manner that is not permitted under the privacy standard;
  5. The signature serves some purpose in addition to the Authorization to disclose PHI; or
  6. The Authorization contains material information known by CalOptima Health to be false.
- D. CalOptima Health staff shall verify the identity of the Personal Representative, in accordance with CalOptima Health Policy HH.3003: Verification of Identity for Disclosures of Protected Health Information.
- E. Revocation of Authorization
1. A Member may revoke an Authorization at any time by submitting the Revocation of Authorization for Release of Protected Health Information Form to CalOptima Health and requesting that the Authorization be revoked.
  2. The revocation will not apply to those Uses or Disclosures made in reliance on the Authorization prior to CalOptima Health receiving the request to revoke the Authorization.
- G. All signed Authorization and revocation notices are retained on file for ten (10) years from the date the documents are received by CalOptima Health.
- H. CalOptima Health shall mail a HIPAA Authorization for Disclosure of Information Form to Members requesting Disclosure of PHI when such form is required by HIPAA privacy regulations.
1. Upon receipt of signed and completed form via fax, or mail, the CalOptima Health Privacy Officer, or designee, shall review, approve, or deny, and disclose requested information when appropriate, per the signed form.
- I. CalOptima Health shall obtain Authorization from the Member for any Use or Disclosure of psychotherapy notes except in the situations listed below. If a Member authorizes a Use or Disclosure of psychotherapy notes in addition to other PHI, CalOptima Health will obtain a separate Authorization for disclosure of psychotherapy notes only. CalOptima Health will not obtain Authorization for a Use or Disclosure of psychotherapy notes in the following situations:
1. Use by the originator of the psychotherapy notes for Treatment;
  2. Use or Disclosure by a covered entity's own training program for students, trainees, or practitioners in mental health, under supervision, to improve skills;
  3. Use by a Provider for purposes of diagnosis, or Treatment, of the Member;
  4. Use or Disclosure by a covered entity to defend itself in a legal action, or other proceeding, brought by the Member; or
  5. Evaluation, or oversight, of the practitioner creating the psychotherapy notes.

- J. CalOptima Health shall obtain Authorization from the Member for any Use or Disclosure of Substance Use Disorder information.
- K. CalOptima Health shall obtain Authorization from the Member for any Use or Disclosure of Sensitive Services information.
- L. Authorization shall be obtained from the Member for any Use or Disclosure of PHI for Marketing, except when:
  - 1. Face-to-face communication is made by CalOptima Health to the Member; or
  - 2. The communication is in the form of a promotional gift of nominal value provided by CalOptima Health.

#### **IV. ATTACHMENT(S)**

- A. Authorization for CalOptima Health to Disclose Protected Health Information (PHI) to Another Person or Entity
- B. Instruction Sheet for CalOptima Health, Health Insurance Portability and Accountability Act (HIPAA) Authorization for Disclosure of Protected Health Information (PHI)
- C. HIPAA Authorization Checklist
- D. Revocation of Authorization for Release of Protected Health Information (PHI)

#### **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 HH.3003: Verification of Identity for Disclosure of Protected Health Information
- F. CalOptima Health Policy HH.3006: Tracking and Reporting Disclosures of Protected Health Information
- G. CalOptima Health Policy HH.3011: Use and Disclosure of Protected Health Information (PHI) for Treatment, Payment, and Health Care Operations
- H. NCQA Standard MED5 Privacy and Confidentiality: Factor B – 2017
- I. California Civil Code, §§56.10(c), 56.11(b) and 56.104
- J. Title 22, Code of California Regulations (C.C.R.), §51009
- K. Title 42, Code of Federal Regulations (C.F.R.), Part 2
- L. Title 45, Code of Federal Regulations (C.F.R.), §§164.502(a)(iv), 164.506(a), and 164.508, 164.512
- M. Welfare & Institutions Code, §14100.2

#### **VI. REGULATORY AGENCY APPROVAL(S)**

None to Date

#### **VII. BOARD ACTION(S)**

<b>Date</b>	<b>Meeting</b>
12/01/2016	Regular Meeting of the CalOptima Board of Directors
12/07/2017	Regular Meeting of the CalOptima Board of Directors

<b>Date</b>	<b>Meeting</b>
12/06/2018	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

## VIII. REVISION HISTORY

<b>Action</b>	<b>Date</b>	<b>Policy</b>	<b>Policy Title</b>	<b>Program(s)</b>
Effective	04/01/2003	HH.3015	Authorization for Release of Protected Health Information (PHI)	Medi-Cal
Revised	04/01/2007	HH.3015	Authorization for Release of Protected Health Information (PHI)	Medi-Cal
Revised	01/01/2008	HH.3015	Authorization for Release of Protected Health Information (PHI)	Medi-Cal
Revised	01/01/2010	HH.3015	Authorization for Release of Protected Health Information (PHI)	Medi-Cal
Revised	01/01/2011	HH.3015	Authorization for Release of Protected Health Information (PHI)	Medi-Cal
Revised	01/01/2013	HH.3015	Authorization for Release of Protected Health Information (PHI)	Medi-Cal
Revised	01/01/2014	HH.3015	Authorization for Release of Protected Health Information (PHI)	Medi-Cal
Revised	11/01/2014	HH.3015	Authorization for Release of Protected Health Information (PHI)	Medi-Cal
Revised	09/01/2015	HH.3015	Authorization for Release of Protected Health Information (PHI)	Medi-Cal
Revised	12/01/2016	HH.3015	Member Authorization for the Use and Disclosure of Protected Health Information	Medi-Cal OneCare OneCare Connect PACE
Reviewed	05/01/2017	HH.3015	Member Authorization for the Use and Disclosure of Protected Health Information	Medi-Cal OneCare OneCare Connect PACE
Revised	12/07/2017	HH.3015	Member Authorization for the Use and Disclosure of Protected Health Information	Medi-Cal OneCare OneCare Connect PACE
Revised	12/06/2018	HH.3015	Member Authorization for the Use and Disclosure of Protected Health Information	Medi-Cal OneCare OneCare Connect PACE
Revised	12/05/2019	HH.3015	Member Authorization for the Use and Disclosure of Protected Health Information	Medi-Cal OneCare OneCare Connect PACE
Revised	12/03/2020	HH.3015	Member Authorization for the Use and Disclosure of Protected Health Information	Medi-Cal OneCare OneCare Connect PACE

<b>Action</b>	<b>Date</b>	<b>Policy</b>	<b>Policy Title</b>	<b>Program(s)</b>
Revised	12/20/2021	HH.3015	Member Authorization for the Use and Disclosure of Protected Health Information	Medi-Cal OneCare OneCare Connect PACE
Revised	12/31/2022	HH.3015	Member Authorization for the Use and Disclosure of Protected Health Information	Medi-Cal OneCare PACE
Revised	09/01/2023	HH.3015	Member Authorization for the Use and Disclosure of Protected Health Information	Medi-Cal OneCare PACE
Revised	10/01/2024	HH.3015	Member Authorization for the Use and Disclosure of Protected Health Information	Medi-Cal OneCare PACE

## IX. GLOSSARY

Term	Definition
Authorization	Has the meaning given such term in 45 CFR § 164.508 and other federal and state laws imposing more stringent Authorization requirements for the Use and Disclosure of Member PHI, <i>e.g.</i> , Welfare & Institution Code § 14100.2.
De-Identified Information	Health information that does not identify a Member and does not provide a reasonable basis to believe that the information can be Used to identify a Member.
Disclosure	Has the meaning given such term in 45 CFR § 160.103 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.
Health Care Operations	Has the meaning given such term in 45 CFR § 164.501 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.
Health Insurance Portability and Accountability Act (HIPAA)	The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, enacted on August 21, 1996. Sections 261 through 264 of HIPAA require the Secretary of the U.S. Department of Health and Human Services to publicize standards for the electronic exchange, privacy and security of health information, as amended.
Marketing	<p><u>Medi-Cal</u>: Any activity conducted by or on behalf of CalOptima Health where information regarding the services offered by CalOptima Health is disseminated in order to persuade or influence eligible beneficiaries to enroll. Marketing also includes any similar activity to secure the endorsement of any individual or organization on behalf of CalOptima Health.</p> <p><u>OneCare</u>: Activities and use of materials that are conducted by CalOptima Health with the intent to draw a beneficiary's attention to CalOptima Health and to influence a beneficiary's decision- making process when selecting a plan for enrollment or deciding to stay enrolled in a plan (that is, retention-based marketing). Additionally, marketing contains information about CalOptima Health's benefit structure, cost sharing, measuring or ranking standards.</p> <p><u>PACE</u>: Any activity conducted by or on behalf of CalOptima Health PACE where information regarding the services offered by CalOptima Health PACE is disseminated in order to persuade Eligible Beneficiaries to enroll. Marketing also includes any similar activity to secure the endorsement of any individual or organization on behalf of CalOptima Health PACE.</p>
Member	A beneficiary enrolled in a CalOptima Health Program.
Payment	<p>Activities carried out by CalOptima Health including:</p> <ol style="list-style-type: none"> <li>1. Determination eligibility, risk adjustments based on the Member health status and demographics, billing claims management, and collection activities;</li> <li>2. Review of health care services regarding medical necessity, coverage under a health plan, appropriateness of care, or justification or charges; and</li> <li>3. Utilization review activities including pre-certification, pre-Authorization, concurrent, or retrospective review of services.</li> </ol>

<b>Term</b>	<b>Definition</b>
Personal Representative	Has the meaning given to the term Personal Representative in section 164.502(g) of title 45 of, Code of Federal Regulations. A person who has the authority under applicable law to make health care decisions on behalf of adults or emancipated minors, as well as parents, guardians or other persons acting <i>in loco parentis</i> who have the authority under applicable law to make health care decisions on behalf of unemancipated minors and as further described in CalOptima Health Policy HH.3009: Access, Use, and Disclosure of PHI to a Member's Personal Representative.
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 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"> <li>1. The past, present, or future physical or mental health or condition of a Member;</li> <li>2. The provision of health care to a Member; or</li> <li>3. Past, present, or future Payment for the provision of health care to a Member.</li> </ol>
Provider	<p><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> <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>
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).
Treatment	Has the meaning in 42 Code of Federal Regulations Section 164.501, including: activities undertaken on behalf of a Member including the provision, coordination, or management of health care and related services; the referral to, and consultation between, health care Providers; and coordination with third parties for services related to the management of the Member's health care benefits.
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.