



## CAHP IMPLEMENTATION GUIDELINE

### AB 1184 (Chiu) Chapter 190, Statutes of 2021

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*As a service to our members, the California Association of Health Plans produces guidelines designed to assist in the interpretation and implementation of new laws, and to promote full compliance with those laws. This document, however, is not intended to be authoritative. Any questions about official interpretations of the law should be directed to the appropriate state regulatory agency such as the Department of Managed Health Care or the Department of Health Care Services, as well as your legal counsel.*

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#### **MEDICAL INFORMATION: CONFIDENTIALITY**

##### BACKGROUND

Assembly Bill 1184 was introduced by Assembly Member David Chiu (D-San Francisco) and sponsored by Planned Parenthood of California

AB 1184 requires health plans to accommodate all requests for confidential communication of medical information (CCR) regardless of whether it involves sensitive services or a situation in which disclosure would endanger the individual. Furthermore, AB 1184 requires health plans to direct all communication regarding a protected individual of sensitive health care services directly to the protected individual, and prohibits the disclosure of the information to the policyholder without the authorization of the protected individual. Lastly, AB 1184 requires health plans to notify enrollees that they may submit a CCR, how they may submit a CCR and requires information about CCRs to be provided upon initial enrollment and on the health plan's website.

CAHP initially had several concerns with the bill when it was introduced, and worked closely with the author and sponsors to work on amendments to address our concerns. The author and sponsors willingly committed to working with CAHP to address some of our concerns, and we were able to secure significant amendments to the bill early in the process. However, later on in the legislative session, the trajectory of the bill took an unfortunate turn. During negotiations on additional amendments to the bill, the sponsors revealed that they had intended for the bill's CCR provisions to apply to all individuals, not just those seeking a CCR under the trigger of receiving a sensitive service. CAHP had strong concerns with making CCRs open to all who request them, as this process is very administratively cumbersome for health plans to comply with. Initially, Senator Richard Pan (D-Sacramento), chair of the Senate Health Committee, agreed with the CAHP regarding the administrative burden this bill would create for health plans. However, he received heavy pressure from the sponsors to expand the scope of the bill and eventually let it move through his committee unchanged. While the author did take some additional amendments we suggested, he chose to leave the expanded scope of those eligible to receive a CCR intact.

AB 1184 passed out of the Legislature on a mostly party-line vote, with Republicans mostly voting no. Despite the numerous policy issues with the bill, the Governor signed AB 1184 on September 22, 2021.

## REQUIREMENTS

Specifically, AB 1184 does the following:

- 1) Deletes the condition that a enrollee/insured CCR clearly state either that a communication discloses medical information or provider name/address relating to receipt of sensitive services or that disclosure of all or part of the medical information or provider name/address could endanger the subscriber or enrollee in order for the health/plan insurer to accommodate the request under 2) of “existing law” above. Deletes existing law that permits health plans/insurers to require a statement accompany a CCR described under 3) of “existing law” above.
- 2) Prohibits health plans/insurers from requiring a “protected individual” to obtain the policyholder, primary subscriber, or other enrollee/insured’s authorization to receive sensitive services or to submit a claim for sensitive services if the protected individual has the right to consent to care.
- 3) Defines “protected individual” as a covered adult or, a minor who can consent to a health care service without the consent of a parent or legal guardian. Specifies that “protected individual” does not include an individual that lacks the capacity to give informed consent for health care pursuant to existing law.
- 4) Requires health plans/insurers to recognize the right of a protected individual to exclusively exercise rights granted under this bill regarding medical information related to “sensitive services” that the protected individual has received.
- 5) Updates the definition of “sensitive services” to further clarify that mental or behavioral health, sexual and reproductive health, sexually transmitted infections, substance use disorder, gender affirming care, and intimate partner violence are included.
- 6) Requires health plans/insurers to direct all communications regarding a protected individual’s receipt of sensitive services directly to the protected individual as follows:
  - a) If the protected individual has designated an alternative mailing address, email address, or telephone number, health plans/insurers are required to send or make all communications related to the protected individual’s receipt of sensitive services to the alternative mailing address, email address, or telephone number designated; and,
  - b) If the protected individual has not designated an alternative mailing address, email address, or telephone number, health plans and insurers are required to send or make all communications related to the protected individual’s receipt of sensitive services in the name of the protected individual at the address or telephone number on file.
- 7) Specifies that communications subject to these notifications include the following written, verbal, or electronic communications related to the receipt of sensitive services: bills and attempts to collect payment; notices of adverse benefits determinations; explanation of benefits (EOB) notice; requests for additional information regarding a claim; notices of contested claims; the name and address of a provider, description of services provided, and other

information related to a visit; and, any written, oral, or electronic communication that contains protected health information.

- 8) Prohibits health plans/insurers from disclosing medical information related to sensitive services provided to a protected individual to the policyholder, primary subscriber, or any plan enrollees other than the protected individual receiving care, absent an express written authorization of the protected individual receiving care.
- 9) Requires health plans/insurers to notify subscribers and enrollees that they may submit a CCR and how they may submit a CCR. Requires information about CCRs to be provided upon initial enrollment and annually thereafter upon renewal:
  - a) In a conspicuously visible location in the evidence of coverage; and,
  - b) On the health plan/insurer website, accessible through a hyperlink on its home page and in a manner that allows enrollees/insureds, prospective enrollees/insureds, and members of the public to easily locate the information.
- 10) Makes the changes in 1) through 9) above effective on July 1, 2022, and makes other technical, conforming changes.

#### COMPLIANCE DATES

Plans will be required to implement the provisions of this legislation beginning on July 1, 2022.

#### IMPLEMENTATION ISSUES

##### Applicability:

This law applies to all health care service plans and health insurers.

##### Implementation Issues:

Civil Code section 56.107 requires health plans to communicate directly with a protected individual at the address or telephone number on file regarding the receipt of “sensitive services”:

- (i) Bills and attempts to collect payment.
- (ii) A notice of adverse benefits determinations.
- (iii) An explanation of benefits notice.
- (iv) A health care service plan’s request for additional information regarding a claim.
- (v) A notice of a contested claim.
- (vi) The name and address of a provider, description of services provided, and other information related to a visit.
- (vii) Any written, oral, or electronic communication from a health care service plan that contains protected health information.

Health plans will need to ensure administrative processes are in place to accommodate requests for confidential communications by individuals in the form and format requested.

In order to comply with the notification requirements of this section, plans should also review their internet websites and member handbooks/Evidence of Coverage (EOC) and update them accordingly.

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*If you have any questions regarding this document, please email Jedd Hampton at [jhampton@calhealthplans.org](mailto:jhampton@calhealthplans.org).*