

POLICY AND PROCEDURE	
TITLE: Member Rights for Use and Disclosure of Protected Health Information (PHI).	
DEPARTMENT POLICY OWNER: Compliance	POLICY #: HPA21
IMPACTED DEPARTMENT(S): Check all departments impacted by this policy	
<input type="checkbox"/> Administration <input type="checkbox"/> Claims <input type="checkbox"/> Compliance <input type="checkbox"/> Customer Service <input type="checkbox"/> External Affairs <input type="checkbox"/> Facilities <input type="checkbox"/> Finance	<input type="checkbox"/> Human Resources <input type="checkbox"/> Information Technology <input type="checkbox"/> Marketing <input type="checkbox"/> Medical Management <input type="checkbox"/> Provider Networks <input type="checkbox"/> Project Management x ALL
EFFECTIVE DATE: 04/14/2003	REVIEW/REVISION DATE: 03/03, 04/05, 06/12, 09/14, 11/15, 05/16, 06/17, 12/18, 05/20, 12/20, 09/21
COMMITTEE APPROVAL DATE: PSOC 09/14 PRC 06/16, 07/17, 02/19, 09/21 Compliance: 03/25/2019	RETIRE DATE: MM/YY
PRODUCT TYPE: Medi-Cal	REPLACES: HPA17, HAP18, HPA19, HPA20, HPA35

I. PURPOSE

The Health Plan of San Joaquin (HPSJ) shall permit HPSJ Members to request a restriction on how the HPSJ or its Business Associates uses or discloses their Protected Health Information (PHI) for treatment, payment, or health care operations as permitted by the Health Insurance Portability and Accountability Act (HIPAA). Members are also permitted to request that disclosures be restricted from their family, friends or any other persons identified by the Member regarding their care or payment of services.

II. POLICY

A. The HPSJ must permit a Member to request restrictions of Uses and Disclosures of PHI for Treatment, Payment, and Health Care Operations as permitted under 45 CFR §164.522. A Member may request, in writing, that the HPSJ restrict the Use and/or Disclosure of his or her PHI. The HPSJ retains the right to approve or deny such request.

- B. Requests for restriction must be processed according to this policy and all documentation maintained by the Compliance Department per policy CMP02 Records Management and Retention.
- C. Knowledge of a violation of this policy is reported directly to the Compliance Department either in person, via email or anonymously as cited in policy CMP01 Response and Prevention of Compliance Violations.
- D. The Compliance & Privacy Officer reviews this policy at least annually and revises as necessary.

III. PROCEDURE

A. Processing a Request for Restriction

1. The Member completes and submits a HPSJ Request for Restriction form (Form). The Member obtains the Form by calling or visiting the HPSJ Customer Service Department who documents the request as a call log. HPSJ Workforce members obtains the Form from Intranet/Forms/HIPAA. The Form shall only be mailed to the address maintained in the claims system at the time of the request. If a Member wishes to have the form mailed to an alternative address, they are also sent a Request for Confidential Communications form, see policy HPA17 Right of Member to Request Confidential Communications. A letter submitted by the Member containing the same information as the Form is acceptable. Verbal requests for restriction either by telephone or in person are not acceptable.
2. A completed Form is forwarded to the Compliance Department who determines whether the request is accepted or denied. The Compliance Department may consult with the Utilization Management Director as needed.
3. Requests for Restriction:
 - a. Reasonable requests must be accepted and accommodated if the Member clearly states that disclosure of all or part of their PHI could endanger them. No additional documentation is required or will be sought to validate the Member's statement.
 - b. Reasonableness of the request will be determined solely on the basis of the administrative difficulty of complying with the request. HPSJ will not refuse a request based on perception of the merits of the individual's reason for making the request.
 - c. All other requests will be reviewed and considered on a case-by-case

basis that weighs the best interests of the Member with the HPSJ's ability to use and disclose the Member's PHI as it relates to treatment, payment, and health care operations, or other required disclosures as described in the Notice of Privacy Practices (NPP). The HPSJ is not obligated to accept these types of requests.

4. Denial of a Request for Restriction is determined as follows:
 - a. Any request that restricts HPSJ's ability to use or disclose the Member's PHI for treatment, payment or health care operations, or other disclosures identified in the NPP, except in situations described under III.A.3.a.
 - b. Any request for which HPSJ cannot sufficiently ensure that any breach of a restriction would not occur, e.g. inability to alert all the HPSJ operational staff of the restriction, except as described under III.A.3.a.
 5. Requests for Restriction are reviewed and responses delivered verbally or in writing to the Member by the Compliance Department within thirty (30) days of receipt of the request. Accepted Requests for Restriction are relayed in writing within thirty (30) days of receipt of the request to the HPSJ Business Associates.
- B. Terminating a Restriction
1. The HPSJ or Member may terminate a restriction.
 2. The HPSJ notifies the Member in writing before removing the restriction. The HPSJ only terminates the restriction with respect to PHI we create or receive after the date that the HPSJ informs the Member, except in an emergency situation when a provider is requesting the information in order to provide treatment to the Member.
 3. The HPSJ will not terminate a restriction that was placed due to the Member's statement of endangerment, unless the Member requests the termination.
 4. The Member must notify the HPSJ in writing before a restriction is removed. Termination of a restriction is applied retroactively at the direction of the Member.
- C. The Compliance Department retains all Requests for Restriction and subsequent acceptance or denial letters for a minimum of six (6) years as required by 45 CFR §164.530(j)(2) and in the manner described in policy CMP02 Records Management and Retention.

IV. ATTACHMENT(S)

[Glossary of Terms Link](#)

A.

B. HPSJ Request for Restriction Form

V. REFERENCES

- A. 45 CFR Parts §160, §162 and §164 HIPAA Regulations
- B. California Civil Code §56 - §56.37 Confidentiality of Medical Information Act
- C. CMP01 Response and Prevention of Compliance Violations
- D. CMP02 Records Management and Retention
- E. DHCS Contract Exhibit G
- F. Health Information Technology for Economic and Clinical Health Act (HITECH Act)
- G. HPA17 Right of Member to Request Confidential Communications

VI. REGULATORY AGENCY APPROVALS

DHCS Approved on 9/13/12, and 1/27/17.

VII. REVISION HISTORY

STATUS	DATE REVISED	REVISION SUMMARY
Revised	12/11/18	P&P was updated for clarity and placed in new P&P template. Additionally, the P&P was renamed from Right of Right of a Member to Request a Restriction to Right of a Member to Request a Restriction Use or Disclosure of Protected Health Information.
Updated	12/19/19	Policy updated to replace other HPA policies.
Updated	12/11/20	Policy template updated.
Reviewed	09/12/21	No content changes.