

POLICY AND PROCEDURE

Policy # and TITLE:

HPA43 Member Rights for Protected Health Information

Primary Policy owner:

Compliance

POLICY #:

HPA43

Impacted/Secondary policy owner: Select the department(s) that are responsible for compliance with all, or a portion of the policy or procedure as outlined

- 1) ☒ All Departments
- 2) ☐ Behavioral Health (BH)
- 3) ☐ Benefits Administration (BA)
- 4) ☐ Care Management (CM)

- 5) ☐ Claims (CLMS)
- 6) ☐ Community Marketplace & Member Engagement (MAR)
- 7) ☐ Compliance (CMP/HPA)
- 8) ☐ Configuration (CFG)
- 9) ☐ Provider Contracting (CONT)
- 10) ☐ Cultural & Linguistics (CL)
- 11) ☐ Customer Service (CS)
- 12) ☐ Facilities (FAC)
- 13) ☐ Finance (FIN)
- 14) ☐ Health Equity (HEQ)
- 15) ☐ Human Resources (HR)
- 16) ☐ Information Technology / Core Systems (IT)
- 17) ☐ Pharmacy (PH)

18) ☐ Provider Networks (PRO)

19) ☐ Quality Management (QM/GRV/HE)

20) ☐ Utilization Management (UM)

PRODUCT TYPE:

☒ Medi-Cal

Supersedes Policy

Number:

HPA17, HPA18, HPA19,
HPA20, HPA21, HPA42

I. PURPOSE

To outline San Joaquin County Health Commission (“Commission”), operating and doing business as Health Plan of San Joaquin and Mountain Valley Health Plan (“Health Plan”), compliance with Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Confidentiality of

Medical Information Act (CMIA) by maintaining a Designated Record Set (DRS) and facilitating member and/or his/her Personal Representative (collectively “Member”) interaction with their Protected Health Information (PHI).

II. POLICY

A. The Health Plan complies with the following individual rights for members to access their health information¹.

1. **Request Confidential Communications –**

Members may request confidential

¹ 45 CFR 164.524

communications in an alternative format or send to an alternate location.

- a. The Health Plan accommodates members written requests for communications of PHI to be sent via alternative means or to an alternate location².
- b. The Health Plan provides access and information to members in the form and format requested if it is readily producible, this includes but is not limited to an electronic format.³

² 45 C.F.R. § 164.522(b)

³ 42 U.S.C. section 17935(e)

- c. The Health Plan processes the confidential communication changes requested within seven (7) calendar days of receipt of the request sent through electronic/fax communication, and within 14 calendar days if received by first class mail.
- d. The Health Plan sends a letter to the member acknowledging the receipt of their confidential communication request and the status of the request.⁴

⁴ DMHC APL 22-010 – *Confidentiality of Medical Information*

2. **Request an Inspection and/or a Copy –**

Members may request an inspection and/or obtain a copy of their PHI contained in the DRS, except in the follow instances:

- a. Psychotherapy notes.
- b. Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.
- c. PHI maintained by a covered entity when circumstances fall under the “reviewable grounds for denial” criteria. A covered entity may deny an individual access without providing the individual an

opportunity for review when the PHI is excepted from the right of access.⁵

- d. Under this condition, the Health Plan's Members retain the right to have the denial reviewed by a licensed health care professional who is designated by the Covered Entity to act as a reviewing official, who did not participate in the original decision to deny.

3. **Request to Amend** – Members can request that their PHI be amended,

⁵ 45 CFR §164.524(a)(2)

if the member believes the data to be inaccurate or incomplete.⁶

4. **Request an Accounting of Disclosures –**
Members can request an accounting of disclosures made or maintained of their PHI made by the Health Plan in the six (6) years prior to the date of which the accounting is requested except for disclosures to carry out treatment, payment, and health care operations, for national security or intelligence purposes, and as part of a limited data set.

⁶ 45 CFR 164.524 and 42 CFR §438.100 (b)(2)(vi))

A Member may utilize a request for an accounting of disclosures form to make such a request to the Health Plan.⁷

Requests for an accounting of disclosures are processed according to this policy and all documentation is retained by the Compliance Department.⁸

5. **Request a Restriction** – The Health Plan must permit a member to request restrictions on Uses and Disclosures of

⁷ 45 CFR § 164.528

⁸ Policy CMP02 Records Management and Retention

PHI for Treatment, Payment, and Health Care Operations.⁹

- a. A Member must communicate this request for restriction in writing, but the Health Plan retains the right to approve or deny such requests unless required for access or accounting of disclosures.¹⁰
- b. Requests for restriction are processed according to this policy and all documentation is

⁹ 45 CFR §164.522

¹⁰ 45 C.F.R. §164.502(a)(1)

maintained by the Compliance Department.¹¹

- c. Members may request that disclosures be restricted from their family, friends or any other persons identified by the Member regarding their care or payment of services.
- d. Denial of Requests for Restriction
 - i. The reasonableness of the request will be determined by the Compliance Department.
 - ii. All requests will be reviewed and considered on a case-by-case

¹¹ Policy CMP02 Records Management and Retention

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

- iii. The Health Plan may deny these requests, except in situations 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.

- iv. Any request may be denied if the Health Plan cannot sufficiently ensure that a breach of the restriction would not occur, e.g., inability to alert all the Health Plan's workforce of the restriction, except 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.

- v. Requests for Restriction are reviewed, and responses delivered verbally or in writing to the Member within thirty (30) days of receipt of the request.
- vi. Accepted Requests for Restriction are relayed in writing within thirty (30) days of receipt of the request to the Health Plan's Third Parties.

B. Authorized Personal Representatives

1. The Health Plan treats a Personal Representative as the Member.

The Health Plan only discloses the PHI of

a Member that is directly relevant to such person's involvement with the Member's care or with the member's payment for care.

2. The Health Plan may elect not to consider a person as the Personal Representative of a member if the Health Plan has a reasonable belief that the member has been or may be subjected to domestic violence, abuse, or neglect by the person, or treating such person as the Personal Representative could endanger the member.

3. The parent is considered the Personal Representative of an unemancipated minor, except: ¹²
 - a. When California or other State law allows a minor the right to obtain certain sensitive services without the consent of his or her parent, and the minor consents to such treatment without the parent's consent.¹³
 - b. When a court determines, or other law authorizes someone other than the parent to make treatment decisions for a minor, or when a

¹² 45 C.F.R. §164.502(g)(3)

¹³ 45 CFR 164.502(g)

parent agrees to a confidential relationship between the minor and the physician.

C. Deceased Members

1. An executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, and the Health Plan treats such person as a Personal Representative with respect to PHI relevant to such personal representation.¹⁴

¹⁴ 45 C.F.R. § 164.502 (g)(4)

2. The Health Plan complies with the Privacy Rule requirements with respect to the PHI of a deceased individual for a period of 50 years following the death of the individual.¹⁵
 - a. The Health Plan may disclose the PHI of a deceased individual to a Personal Representative as defined in this Policy.¹⁶
 - b. The Health Plan may disclose PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining a

¹⁵ 45 C.F.R. § 164.502 (f)

¹⁶ 45 C.F.R. § 164.510(b)(5)

cause of death, or other duties as authorized by law.¹⁷

- C. The Health Plan may disclose PHI to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If necessary, for funeral directors to carry out their duties, the Health Plan may disclose the PHI prior to, and in reasonable anticipation of, the individual's death.¹⁸

¹⁷ 45 C.F.R. §164.512(g)

¹⁸ 45 C.F.R. §164.512(g)

3. The Health Plan uses or discloses PHI to a public or private entity authorized by law or by its charter to assist in disaster relief efforts for the purpose of coordinating with such entities.
4. Knowledge of a violation of this Policy is reported directly to the Compliance Department either in person, via email or anonymously.¹⁹
5. The Privacy Officer reviews this policy at least annually and revises as necessary.

¹⁹ Policy CMP01 Response and Prevention of Compliance Violations

III. PROCEDURE

A. The Health Plan processes requests from members to obtain, access, correct, and restrict their PHI.

1. Forms are obtained by members by calling or visiting Customer Service or from the Compliance Program Page on the Health Plan's Website. Requests can be mailed out, but if they are sent to an alternate address the Health Plan sends a Request for Confidential Communications to the member. The member is required to complete the form, once it is completed it will be received by the Customer Service Department via mail, email, or in

person. Customer Service will intake the requests, and then send it to the Compliance Department to review for approval.

2. Request made in person at the Health Plan's office will require the member or the member's personal representative, (except for personal representatives of members that are Senior & Persons with Disability (SPD)), to be physically present and present their valid photo ID from a government agency.
 - a. SPD Members are not required to complete an Authorization form in the case of physical or mental incapacity. Staff may utilize data

submitted by DHCS to identify a Personal Representative. All other proof must be approved by the Compliance Department.

3. If the Health Plan must seek an Authorization from the Member or Personal Representative, the Health Plan's personnel will complete all sections of the Authorization form before providing it to the Member or their Personal Representative for signature. A copy of the executed authorization will be provided to the member.

4. Processing Requests

- a. For each type of request there are certain circumstances in which the Health Plan has the right to deny the request.²⁰
- b. For each type of request there are specific timelines within which the Health Plan is required to complete the processing of the requests.

²⁰ Desk Level Procedure *Member Rights for Protected Health Information*

- c. The following requests are the various requests members can submit to the Health Plan:
 - i. Confidential Communications Request
 - ii. Request to Access Health Information
 - iii. Request to Amend PHI
 - iv. Request for an Accounting of Disclosures
 - v. Request for Restriction of PHI
- d. The following forms are the Health Plan's forms that members can submit to the Health Plan to give other individuals access to their PHI:
 - i. Caregiver Affidavit Form

- ii. Member Authorization for Use
and Disclosure of PHI Form
- iii. Member Authorization to Revoke
a Previous Authorization Form
- e. The following are requests that
members can submit to give other
individuals access to their PHI based
on their various situations:
 - i. Conservatorship Request
 - ii. Foster Care Request
 - iii. Adoption Request
 - iv. Guardianship Request
 - v. Power of Attorney Request
 - vi. Advanced Directive Request

B. Revocation of an Authorization

1. Members, or Personal Representative, have the right to revoke an Authorization at any time.

The revocation must be requested in writing and is applied retroactively in the Member's direction. The member can submit the Health Plan's form *Member Authorization to Revoke a Previous Authorization* also available on the Health Plan's website.

2. The Health Plan takes all necessary steps to honor and comply with a revocation unless the Health Plan has acted in reliance thereon.

3. The Health Plan only processes revocation requests for PHI we create or receive after the date the Health Plan was informed, except in emergency situations when a provider is requesting the information to provide treatment to the Member.
4. The Health Plan notifies the Member in writing before removing restrictions.
5. The Health Plan will not terminate a restriction that was placed due to the Member's statement of endangerment unless the Member requests the termination.

C. The Compliance Department retains copies of all valid and invalid requests and revocations.²¹

D. Specialized Government Function

Requests are processed in accordance with regulations, and are reviewed by the Compliance Department, and are responded to in an enveloped marked “Confidential” or by secure email or fax. Individuals who issue these requests in person will be required to show a valid photo ID, and proof of their authority as a government oversight agency.

²¹ CMP02 *Records Management and Retention* and 45 CFR §164.530(j)(2)

Accepted requests are limited to those specified in section K of 45CFR §164.512.

IV. ATTACHMENT(S)

- A. *CMP01 Response and Prevention of Compliance Violations*
- B. *CMP02 Records Management and Retention*
- C. *Desk Level Procedure Member Rights for Protected Health Information*
- D. *DHCS Medi – Cal Managed Care Plans Definitions (Exhibit A, Attachment I, 1.0 Definitions)*
- E. [Glossary of Terms Link](#)

- F. Medi-Cal Managed Care Contract
Acronyms List (Exhibit A, Attachment I,
2.0 Acronyms)
- G. Member Authorization for Use and
Disclosure of PHI
- H. Member Authorization to Revoke a
Previous Authorization
- I. Member Caregiver Affidavit
- J. Member Request for Accounting of
Disclosures
- K. Member Request for Confidential
Communications
- L. Member Request to Access Health
Information

M. Member Rights for Protected Health
Information (PHI)

N. Restriction Form

O. HPSJ Business Associate Agreement

V. REFERENCES

A. 42 CFR §438.100 (b)(2)(vi)

B. 45 CFR Parts §160, §162 and §164 HIPAA
Regulations

C. California Civil Code §56 – §56.37
Confidentiality of Medical Information Act

D. DHCS Contract Exhibit G. Health Insurance
Portability and Accountability Act

E. DMHC APL 22-010 – *Confidentiality of
Medical Information*

F. Health Information Technology for
Economic and Clinical Health Act
(HITECH Act)

G. Welfare & Institutions Code §14100.2

VI. REVISION HISTORY

**Version 001 as of 06/26/2023*

Version*	Revision Summary	Date
001	Policy Created	6/26/23
002	Add relevant content from HPA21 and HPA42	9/20/23
003		
004		
Initial Effective Date: 6/26/23		

VII. COMMITTEE REVIEW AND APPROVAL

Committee Name	Version	Date
Compliance Committee	002	12/7/2023
<ul style="list-style-type: none"> Privacy & Security Oversight Committee (PSOC) 	002	11/7/2023
<ul style="list-style-type: none"> Program Integrity Committee 		
<ul style="list-style-type: none"> Audits & Oversight Committee 		
<ul style="list-style-type: none"> Policy Review 	002	11/15/2023

Committee Name	Version	Date
Quality and Utilization Management		
<ul style="list-style-type: none"> Quality Operations Committee 		
<ul style="list-style-type: none"> Grievance 		

VIII. REGULATORY AGENCY APPROVALS

Department	Reviewer	Version	Date
Department of Healthcare services (DHCS)	N/A	N/A	N/A

Department	Reviewer	Version	Date
Department of Managed Care (DMHC)	N/A	N/A	N/A

IX. APPROVAL SIGNATURE*

Signature	Name Title	Date
	PRC Chairperson	
	Policy Owner	
	Department Executive	
	Chief Executive Officer	

*Signatures are on file, will not be on the
published copy