



Expiration Date: Until Withdrawn

DEPARTMENT OF MANAGED HEALTH CARE
980 Ninth Street, Suite 500
Sacramento, CA 95814

September 6, 2002

DEPARTMENT ADVICE NO. 02-01

TOPIC: Confidentiality of Enrollee Social Security Numbers

Subject Matter:

Civil Code section 1798.85 protects the confidentiality of Social Security numbers by restricting their public use. The restrictions began to take effect outside the health care field on July 1, 2002, but a separate compliance timetable phases in the application of the law to health care service plans.¹

Action:

Plans are expected to protect the confidentiality of Social Security numbers as required by Civil Code section 1798.85. This obligation includes compliance with the timetable set out in Civil Code section 1798.85(f)(1), including any extensions granted by the Department.

In addition to complying with the specific requirements on the confidentiality of Social Security numbers, plans are expected to continue to comply with Health and Safety Code section 1364.5 and all other applicable privacy and confidentiality provisions.

A health care service plan must make reasonable efforts to cooperate, through systems testing and other means, to ensure that the confidentiality of Social Security number requirements are implemented by the timetable dates (Civ. Code, § 1798.85(f)(2)).

¹ The restrictions also apply to providers of health care, pharmacy benefits managers, contractors and insurers. (Civ. Code, § 1798.85(f)(1).)

Compliance Timetable:

The following timetable outlines the requirements of Civil Code section 1798.85(f)(1):

1. **On or before January 1, 2003:** Health care service plans shall not do any of the following, with respect to existing *individual policyholders*:
 - Publicly post or publicly display in any manner an individual's Social Security number. To "publicly post" or "publicly display" means to intentionally communicate or otherwise make available to the general public.
 - Require an individual to transmit his or her Social Security number over the Internet unless the connection is secure or the Social Security number is encrypted.
 - Require an individual to use his or her Social Security number to access an Internet website, unless a password or unique personal identification number or other authentication device is also required to access the website.
 - Print an individual's Social Security number on any materials that are mailed to the individual, unless state or federal law requires the Social Security number to be on the document mailed. However, applications and forms sent by mail may include Social Security numbers.
2. **On or before January 1, 2004:** With respect to *new individual policyholders and new employer groups issued a policy on or after January 1, 2004*, health care service plans must comply with the requirements in number one above. In addition, health care service plans shall not print an individual's Social Security number on any card required for the individual to access products or services provided by the person or entity.
3. **On or before July 1, 2004:** Health care service plans must comply with the requirements in number one above for *all policyholders and for all enrollees of the Healthy Families and Medi-Cal programs*.
4. **No later than July 1, 2005:** For *individual and employer group policyholders in existence prior to January 1, 2004*, compliance with the requirements in numbers one and two above may occur on the policy renewal date, but no later than July 1, 2005.

Extensions :

Plans may obtain an extension, not to exceed six months, for compliance with these requirements by written request to the Department of Managed Health Care. Any extension granted will also apply to the health care service plan or insurer's affected providers, pharmacy benefits manager, and contractors (Civ. Code, § 1798.85(f)(3).).

To request an extension, a plan should submit a written request in advance of the compliance date to:

G. Lewis Chartrand, Jr.
Assistant Deputy Director
Office of Legal Services
Department of Managed Health Care
980 9th Street, Suite 500
Sacramento, CA 95814

In its extension request, the plan should:

1. Demonstrate that the plan has made reasonable efforts to comply with the timetable, as required by Civil Code section 1798.85(f)(2);
2. Specify which of the five Social Security confidentiality requirements of Civil Code section 1798.85(a) the plan is unable to meet; and,
3. State the reason(s) for noncompliance.

Pending Legislation:

The California Legislature is currently considering Senate Bill 1730 authored by Senator Bowen. (Senator Bowen also authored Senate Bill 168, the Legislation that created Section 1798.85 of the Civil Code.) SB 1730, among other things, contains technical and clarifying amendments to Section 1798.85. Specifically, SB 1730 would clarify that the extended timetables for compliance for health care service plans, health care providers, insurers, pharmacy benefit managers and contractors also apply for “the provision by any person or entity of administrative or other services relative to health care or insurance products or services, including third-party administration or administrative services. SB 1730 also clarifies that all of the provisions that apply to “individual policyholders” also apply to “individual contract holders.” Finally, SB 1730 also clarifies that the extension provided pursuant to paragraph (B) will apply to new individual policyholders or new individual contract holders and new groups, including new groups administered or issued on or after January 1, 2004.

Federal Law:

If a federal law takes effect requiring the United States Department of Health and Human Services to establish a national unique patient health identifier program, a health care service plan that complies with the federal law will be deemed in compliance with state Social Security number confidentiality provisions (Civ. Code, § 1798.85(g)).

Further information:

For further information please contact Kelly Loyer, Staff Counsel, at (916) 445-7976.