

From: DMHC Licensing eFiling

Subject: APL 22-010 (OPL) Guidance Regarding AB 1184 - Confidentiality of Medical Information

Date: Wednesday March 17, 2022 4:29 PM

Attachments: APL 22-010 (OPL) Guidance Regarding AB 1184 (3.17.22).pdf

Dear Health Plan Representative,

Please find attached All Plan Letter (APL) 22-010 Guidance Regarding AB 1184 – Confidentiality of Medical Information. This APL sets forth the Department of Managed Health Care’s guidance regarding how health care service plans shall comply with AB 1184.

If you have questions regarding timelines for filing or other questions about the requirements of this APL, please contact your health plan’s assigned reviewer in the Office of Plan Licensing.

Thank you.



Gavin Newsom, Governor
State of California
Health and Human Services Agency
DEPARTMENT OF MANAGED HEALTH CARE
980 9th Street, Suite 500
Sacramento, CA 95814
Phone: 916-324-8176 | Fax: 916-255-5241
www.HealthHelp.ca.gov

ALL PLAN LETTER

DATE: March 17, 2022

TO: All Health Care Service Plans¹

FROM: Jenny Mae Phillips
Deputy Director
Office of Plan Licensing

SUBJECT: APL 22-010 (OPL) Guidance Regarding Assembly Bill 1184 –
Confidentiality of Medical Information

Assembly Bill (AB) 1184 (Chiu, Ch. 190, Stats. 2021) amends Civil Code sections 56.05 and 56.35, and adds Civil Code section 56.107, effective July 1, 2022. This All Plan Letter (APL) sets forth the Department of Managed Health Care's (DMHC or Department) guidance regarding how health care service plans (plans) shall comply with AB 1184.

I. Background

On September 22, 2021, Governor Gavin Newsom signed AB 1184, which amends the Confidentiality of Medical Information Act² to require plans to take specified steps to protect the confidentiality of a subscriber's or enrollee's medical information.³ These steps include:

- Not requiring a protected individual⁴ to obtain the primary subscriber or other enrollee's authorization to receive sensitive services⁵ or to submit a claim for sensitive services if the protected individual has the right to consent to care.
- Directing communications regarding a protected individual's receipt of sensitive services as follows:

¹ This APL does not apply to Medicare products.

² Civil Code section 56 et seq.

³ "Medical information," as defined in Civil Code section 56.05, subdivision (i).

⁴ "Protected individual," as defined in Civil Code section 56.05, subdivision (l).

⁵ "Sensitive services," as defined in Civil Code section 56.05, subdivision (n).

Protecting the Health Care Rights of More Than 27.7 Million Californians
Contact the DMHC Help Center at 1-888-466-2219 or www.HealthHelp.ca.gov

- Directly to the protected individual's designated alternative mailing address, email address, or telephone number; OR,
- In the absence of a designated alternative mailing address, email address, or telephone number: to the address or telephone number on file in the name of the protected individual.
- Communications (written, verbal or electronic communications) regarding a protected individual's receipt of sensitive services shall include:
 - Bills and attempts to collect payment.
 - A notice of adverse benefits determinations.
 - An explanation of benefits notice.
 - A plan's request for additional information regarding a claim.
 - A notice of a contested claim.
 - The name and address of a provider, description of services provided, and other information related to a visit.
 - Any written, oral, or electronic communication from a plan that contains protected health information.⁶
- Not disclosing medical information related to sensitive health care services provided to a protected individual to the primary subscriber or any plan enrollees other than the protected individual receiving care, absent an express authorization of the protected individual.
- Permitting and accommodating requests from subscribers or enrollees for confidential communication in the form and format requested, if readily producible in the requested form and format, or at alternative locations.
- Implementing confidential communications requests within 7 calendar days of receipt of an electronic or telephonic request or within 14 calendar days of receipt by first-class mail. In addition, acknowledging receipt of confidential communications requests and advising the subscribers or enrollees of the status of implementation of the requests if the subscribers or enrollees contact the plan.
- Notifying subscribers and enrollees they may request a confidential communication, how to make the request, and providing this information to subscribers and enrollees at initial enrollment and annually thereafter on renewal as follows:
 - In a conspicuously visible location in the evidence of coverage.

⁶ "Protected health information" as described in Section 160.103 of Title 45 of the Code of Federal Regulations. (Civ. Code, § 56.103 (c)(2).).

- On the plan's internet website, accessible through a hyperlink on the internet website's home page in a manner allowing subscribers, enrollees, prospective subscribers, prospective enrollees and members of the public to easily locate the information.
- Not conditioning enrollment or coverage on the waiver of the confidentiality rights provided in Civil Code section 56.107.

II. Compliance and Filing Requirements

By April 18, 2022, submit one filing demonstrating compliance with the AB 1184 requirements discussed in this APL. Submit the filing via eFiling as an **Amendment** titled "**Compliance with AB 1184.**"

- In the "Compliance with AB 1184" Amendment filing, include an Exhibit E-1 (the "Compliance E-1") addressing how the plan will comply with AB 1184, list the exhibits submitted and affirm the following:
 - Affirm the plan will not require a protected individual to obtain the primary subscriber or other enrollee'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.
 - Affirm the plan shall recognize the right of a protected individual to exclusively exercise rights granted under Civil Code section 56.107, effective July 1, 2022, regarding medical information related to sensitive services that the protected individual has received.
 - Affirm the plan will direct communications regarding a protected individual's receipt of sensitive services directly to the protected individual receiving care as follows: (a) Directly to the protected individual's designated alternative mailing address, email address, or telephone number; OR, (b) In the absence of an alternative designated mailing address, email address, or telephone number: to the address or telephone number on file in the name of the protected individual. Further, affirm that all such communications shall include the following written, verbal, or electronic communications related to the receipt of sensitive services:
 - Bills and attempts to collect payment.
 - A notice of adverse benefits determinations.
 - An explanation of benefits notice.
 - A plan's request for additional information regarding a claim.
 - A notice of a contested claim.
 - The name and address of a provider, description of services provided, and other information related to a visit.
 - Any written, oral, or electronic communication from the plan that contains protected health information.

- Affirm the plan will not disclose medical information related to sensitive health care services provided to a protected individual to the primary subscriber or any plan enrollees other than the protected individual receiving care, absent an express authorization of the protected individual.
- Affirm the plan will permit and accommodate requests for confidential communications in the form and format requested by the protected individual, if readily producible in the requested form and format, or at alternative locations.
- Affirm the confidential request will be valid until the subscriber or enrollee submits a revocation of request or a new confidential communication request is submitted. Further, affirm the confidential communication request will apply to all communications that disclose medical information or provider name and address related to the receipt of medical services by the individual requesting the confidential communication.
- Affirm the plan will implement confidential communications requests within 7 calendar days of receipt of an electronic or telephonic request or within 14 calendar days of receipt by first-class mail. Further, affirm the plan will acknowledge receipt of confidential communication requests and advise the subscribers or enrollees of the status of implementation of the request if the subscribers or enrollees contacts the plan.
- Affirm the plan will notify subscribers and enrollees they may request a confidential communication and how to make the request. Further affirm the plan will provide this information to subscribers and enrollees at initial enrollment and annual thereafter on renewal as follows:
 - In a conspicuously visible location in the evidence of coverage.
 - On the plan's internet website, accessible through a hyperlink on the internet website's home page in a manner allowing subscribers, enrollees, prospective subscribers, prospective enrollees and members of the public to easily locate the information.
- Affirm the plan will not condition enrollment or coverage on waiver of the confidentiality rights provided in Civil Code section 56.107, effective July 1, 2022.
- Affirm the plan will implement a means of directing all electronic communications, including online portal communications, regarding a protected individual's receipt of sensitive services as required by Civil Code section 56.107, subdivisions (a)(3)(A), (B) and (C)(vii).
- Explain how the plan will ensure its contracted providers comply with AB 1184.

- Submit the following exhibits,⁷ amended for compliance with AB 1184, and ensure all changes to amended exhibits are highlighted by strikeout, underline or other method in accordance with Code of Regulations, title 28, section 1300.52:
 - Exhibit J-18: Policies and Procedures⁸
 - Exhibit I-9: Enrollee Notices⁹
 - Exhibits Q, S, T, and/or U: Schedule of Benefits, Summaries of Benefits and Coverage, Disclosure Forms, Evidences of Coverage^{10, 11, 12} At a minimum, the plan must submit its Evidences of Coverage.
- If amended for compliance with AB 1184, submit the following exhibits, and ensure all changes to amended exhibits are highlighted by strikeout, underline or other method in accordance with Code of Regulations, title 28, section 1300.52:
 - Exhibit I-7: Provider Notices
 - Exhibits K-1 and K-3: Provider Contracts
 - Exhibits N-1, N-2 and N-5: Administrative Service Agreements
 - Exhibit P-5: Plan to Plan Contracts

If you have questions regarding timelines for filing or other questions about the requirements of this APL, please contact your health plan's assigned reviewer in the Office of Plan Licensing.

⁷ Restricted plans may omit submission of Enrollee Notices, if not delegated, and Evidences of Coverage.

⁸ Health & Saf. Code, § 1364.5 policies regarding compliance with the Confidentiality of Medical Information Act.

⁹ See Health & Saf. Code, § 1364.5 subds. (b) & (c), Civ. Code, § 56.107 subds. (a)(3), (b)(5), (c)(1) & (c)(2).

¹⁰ See Health & Saf. Code, § 1364.5 subd. (d), Civ. Code, § 56.107 subds. (c)(2)(A) & (d).

¹¹ Submit an Evidence of Coverage or other disclosure document errata for plan year 2022. If the plan already submitted its Evidence of Coverage or other disclosure documents for plan year 2023, provide the eFiling number where the exhibits are filed and provide the page number(s) of the AB 1184 changes in the Exhibit E-1, otherwise submit plan's 2023 disclosure documents, containing only AB 1184 changes, within this compliance filing.

¹² Medi-Cal Managed Care plans are not required to submit an EOC with this compliance filing.