

From: [DMHC Licensing eFiling](#)
Subject: APL 18-007 (OPL) - Confidentiality of Information Submitted to Office of Plan Licensing
Date: Tuesday, February 20, 2018 2:15:50 PM
Attachments: [APL18-007 \(OPL\) - Confidentiality of Information Submitted to OPL \(2.20.18\).pdf](#)

Dear Health Plan Representative,

Please find the attached All Plan Letter regarding guidance to plans seeking confidentiality for documents submitted through the DMHC's eFiling system and recommendations for ensuring documents submitted through eFiling do not contain confidential information.

Thank you.



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ALL PLAN LETTER

DATE: February 20, 2018

TO: All Health Care Service Plans

FROM: Sarah Ream, Deputy Director
Office of Plan Licensing

SUBJECT: APL 18-007 (OPL) Confidentiality of Information Submitted to Office of Plan Licensing

The Department of Managed Health Care's Office of Plan Licensing continues to receive overly broad and unsupported requests for confidential treatment. These requests require the DMHC and the plans to engage in protracted discussions regarding confidentiality, which unnecessarily delays the DMHC's review and closure of plan filings. This All Plan Letter (APL) provides guidance to plans seeking confidentiality for documents submitted through the DMHC's eFiling system and recommendations for ensuring documents submitted through eFiling do not contain confidential information.

Pursuant to California Code of Regulations, title 28, section 1007, subdivision (e), if the DMHC denies a plan's request for confidentiality, the DMHC will notify the plan of the denial and allow the plan to withdraw the document or information, unless the DMHC has taken an official action (such as issuing a comment letter) in reliance on the information prior to receiving the plan's request for confidential treatment.

A. Guidance For Submitting Requests For Confidentiality Per Regulation Section 1007

1. Before filing any documents with the DMHC, carefully review the documents to determine if there is, in fact, a need to request confidentiality.
2. Submit a request for confidentiality **with** the documents for which you are seeking confidentiality. Use e-Filing exhibit "Request for Confidentiality" when submitting the confidentiality request, as opposed to including the request for confidentiality in an E-1.
 - a. If the DMHC grants the request for confidentiality and the plan subsequently resubmits the confidential document to the DMHC, either in an amendment to

- the eFiling matter in which the DMHC granted confidentiality or in a different eFiling matter, the plan must renew the request for confidentiality.
- b. In the renewed request for confidentiality the plan should reference back to the DMHC prior grant of confidentiality.
3. The DMHC will not grant confidentiality if the confidentiality request simply restates Regulation section 1007, subdivision (b), without providing facts clearly indicating why the DMHC should treat the document or information as confidential and why the time period requested is appropriate and necessary. For example, the DMHC likely will deny a request where the plan claims confidentiality is appropriate merely because “information is such that the private and/or public interest is served in withholding the information” or the information is “proprietary” without providing *specific* facts to support that claim. Likewise, general claims that disclosure of the information will harm the plan’s competitive market advantage without specific facts supporting that claim generally are insufficient to support a request for confidentiality.
 4. With every document a plan wants the DMHC to treat as confidential the plan must submit a confidential version and a redacted public version, unless otherwise specified in statute or regulation.¹
 - a. Clearly mark the documents “confidential” and “public” in the eFiling title of the documents.
 - b. Be sure to lock the confidential document with a green lock in the eFiling system, unless the document is one of the permanently locked documents, such as a K-3 (provider compensation), in which case the eFiling system automatically locks the document with a gold lock.
 - c. For any subsequent amendments to the particular Material Modification or Amendment filing that include the confidential document e-filed with a green “lock”, submit both a confidential and redacted public version.
 5. The DMHC will typically deny retroactive requests for confidentiality of documents previously filed with the DMHC as nonconfidential.
 - a. The DMHC receives hundreds of Public Records Act (PRA) requests every year. The DMHC often receives PRA requests for eFiled documents within a short time after the DMHC receives the documents. For example, merger filings, new license applications, statutory or regulatory change compliance filings, etc., tend to be requested frequently and soon after the DMHC receives the documents from the plan(s).

¹ For example, the Individual Information Sheet is confidential per regulation. (Cal. Code Regs., §1300.51.1.) Health plans are not required to file a redacted version of the Individual Information Sheet.

- b. If the DMHC produces a document in response to a PRA request and the plan later requests the document be treated as confidential, it is likely any protection for that document has already been waived and the DMHC cannot retroactively mark the document as “confidential.”²
6. In responding to licensing counsel questions regarding confidentiality, the plan may need to designate the responsive Exhibit E-1 as partially confidential to explain adequately the plan’s reasoning for the requested confidentiality.
 - a. Remember to submit a confidential version and a closely redacted, public version of the plan’s Exhibit E-1 response. The plan should not redact information from the document filed as “confidential.”
 - b. When making redactions to the nonconfidential public version of the document, please clearly indicate in the document that redactions have been made and where the redactions were made.
 - c. In the confidential version of the document, the plan should highlight or otherwise identify the information the plan requests be kept confidential.
 - d. If submitting a response through the comment portal in eFiling, be certain to designate the comment confidential if you will be discussing specifics of the information provided. Otherwise, phrase responses in a way that does not re-state information you believe to be confidential.

B. Ensuring Public/Nonconfidential Documents Filed Through The eFiling System Do Not Contain Confidential Information

1. Plans should consider all documents submitted to the Office of Plan Licensing via the eFiling system to be public records and subject to production in response to a PRA request unless the document is confidential as a matter of law or the DMHC specifically grants confidential treatment to the document or class of documents.
2. Redactions to documents should be made in a way that does not allow the redacted information to be seen or unlocked.
 - a. Proper redaction methods include:
 - i. Redacting a hardcopy of the document and then scanning the hardcopy to create a PDF; or
 - ii. Making redactions in Adobe or a similar program and then saving the redactions.
 - b. The following redaction methods are usually *ineffective*:

² This does not apply if the document contains personal information of an individual.

- i. Changing the font to white in a Word document.
 - ii. "Hiding" information in a table.
3. Please scrub the documents for metadata if the plan does not want the DMHC to produce, pursuant to a PRA request, the metadata associated with a particular document the plan files through eFiling. The DMHC does not scrub metadata from plan documents prior to disclosure.
4. Do not "lock" documents in Word, PDF, or other programs to prevent edits to them. Doing so can impede the DMHC's ability to produce the document in response to a PRA request.

If you have any questions regarding this APL, please contact the Office of Plan Licensing through your assigned counsel.