CA Minor Consent and Confidentiality Protections

L.A. Trust: Wellness Network

Ruth Dawson
ACLU of Southern California
We’ll cover:

• Minor consent in California
  ➢ Access to services
• Confidential medical release
• Confidential Health Information Act
• Resources for you and patients/ students
A REFRESHER ON MINOR CONFIDENTIALITY RIGHTS
Minor Consent Services

Minors of Any Age

- Pregnancy + Pre-natal
- Contraception + EC
- Abortion
- Rape/abuse/assault services

Minors 12 and Older

- Mental Health + Drug/Alcohol treatment
- STI diagnosis/ treatment/ preventive care
- HIV/AIDS testing and treatment

No parental notification
# Handy Guide

## California Minor Consent and Confidentiality Laws

<table>
<thead>
<tr>
<th>Minors of Any Age May Consent</th>
<th>Law/Details</th>
<th>May/Must the Health Care Provider Inform a Parent About This Care or Disclose Related Medical Information to Them?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pregnancy</strong></td>
<td>“A minor may consent to medical care related to the prevention or treatment of pregnancy,” except sterilization. (Cal. Family Code § 6925).</td>
<td>The health care provider is not permitted to inform a parent or legal guardian without the minor’s consent. The provider can only share the minor’s medical information with them with a signed authorization from the minor. (Cal. Health &amp; Safety Code §§ 123110(a), 123115(a)(1), Cal. Civ. Code §§ 56.10, 56.11).</td>
</tr>
<tr>
<td><strong>Contraception</strong></td>
<td>A minor may receive birth control without parental consent. (Cal. Family Code § 6925).</td>
<td>The health care provider is not permitted to inform a parent or legal guardian without the minor’s consent. The provider can only share the minor’s medical information with them with a signed authorization from the minor. (Cal. Family Code § 6925; American Academy of Pediatrics v. Lungren, 16 Cal.4th 307 (1997)).</td>
</tr>
<tr>
<td><strong>Abortion</strong></td>
<td>A minor may consent to an abortion without parental consent. (Cal. Family Code § 6925; American Academy of Pediatrics v. Lungren, 16 Cal.4th 307 (1997); Cal. Health &amp; Safety Code §§ 123110(a), 123115(a)(1), Cal. Civ. Code §§ 56.10, 56.11).</td>
<td>The health care provider must attempt to contact the minor’s parent/guardian and note in the minor’s record the day and time of the attempted contact and whether it was successful. This provision does not apply if the treating professional reasonably believes that the parent/guardian committed the assault. (Cal. Family Code § 6928).</td>
</tr>
<tr>
<td><strong>Sexual Assault¹ Services</strong></td>
<td>“A minor who [may] have been sexually assaulted may consent to medical care related to the diagnosis, ... treatment and the collection of medical evidence with regard to the ... assault.” (Cal. Family Code § 6928).</td>
<td>Both rape and sexual assault of a minor are considered child abuse under California law and must be reported as such to the appropriate authorities by mandated reporters. The child abuse authorities investigating a child abuse report legally may disclose to parents that a report was made. (See Cal. Penal § 11167 and 11167.5.)</td>
</tr>
<tr>
<td><strong>Rape² Services for Minors Under 12 Yrs³</strong></td>
<td>A minor under 12 years of age who may have been raped “may consent to medical care related to the diagnosis, ... treatment and the collection of medical evidence with regard” to the rape. (Cal. Family Code § 6928).</td>
<td></td>
</tr>
</tbody>
</table>

---

¹For the purposes of minor consent alone, sexual assault includes acts of oral copulation, sodomy, and other crimes of a sexual nature.

²Rape is defined in Cal. Penal Code § 261.

³See also “Rape Services for Minors 12 and Over” on page 3 of this chart.
Confidential Medical Release

- Schools are gatekeepers to young people accessing services.
- Young people have the right to leave school to seek confidential medical services.
  - Note: if a service has a min. age requirement of 12, the student must be $\geq 12$ to leave via CMR.
- Also called “sensitive services,” these services are the minor consent services we just covered.
Confidential Medical Release

• Students have the right to be excused without the consent or notification of parents/guardians.
• Students must be allowed to make up all assignments.
School officials must excuse students from school to access confidential medical appointments. Cal Ed. Code 48205

School officials must “notify pupils in grades 7 to 12, inclusive, and the parents or guardians of all pupils enrolled in the district, that school authorities may excuse any pupil from the school for the purpose of obtaining confidential medical services without the consent of the pupil's parent or guardian.” Cal Ed. Code 46010.1
CMR: Liability Concerns

• School districts are (by and large) not liable for students when on CMR.

• School districts and employees not liable for student injuries that occur outside of school property except in limited circumstances:
  • 1) provided a pupil with transport to and from school premises for a school-sponsored activity off school premises, or
  • 2) have specifically assumed supervision of pupil activity off of the school premises and afterwards failed to exercise reasonable care in maintaining supervision.

• Note: NO court case holding a school liable for a youth’s safety after the school followed the law on CMR.

Source: Cal. Ed Code 44808, NCYL’s “Confidential Medical Release: Frequently Asked Questions from Schools and Districts”
Confidential Medical Release

- ACLU + NCYL campaign at school district level
  - Blatantly noncompliant districts
  - Changed ~ 25 noncompliant school districts, assisted numerous others

- Remaining issues:
  - Practical implementation (e.g. robocall systems)

- If you know a young person who is worried about violation of this law, call us!
NEW PRIVACY PROTECTIONS UNDER THE CONFIDENTIAL HEALTH INFORMATION ACT
ACA Implementation in California: Expanding Health Care Coverage

4.1 million+ newly insured

- 3 million Medi-Cal
- 1.5 million Covered California
  - 1,222,320 with subsidies
  - 161,762 young adults
ACA Implementation in California: Preventive Services

Services that must be provided without cost to patients include:

- Contraception
- Some cancer screenings
- Depression screening
- Domestic violence screening + counseling
- STI prevention counseling + screening
- HPV + Hep B vaccines, among others
This is GREAT but...

Will individuals with health insurance under another person’s plan feel safe enough to use it?
Confidentiality Breaches

Have you heard a teen/young adult say:

• “I don’t go to my regular doctor because I don’t want my mom/dad to find out.”

• “I went to my doctor, used my parent’s insurance, and my mom/dad found out I got a pregnancy test/ birth control / abortion/ STD test.”

• “My parent found out I was prescribed Prozac / Adderall...”
Current Laws to Protect Confidentiality

General Rule under HIPAA and CA law:

Providers and insurers must protect the confidentiality of personal health information.

Usually, they must have a signed “authorization” in order to share protected health information.
The Problem

Exceptions in confidentiality law allow disclosure without patient knowledge:

- Reporting certain violence
- Child abuse reporting
- Sharing for health care operations
- Billing and payment processing
Common insurance communications that reveal patient information

- Explanation of Benefits forms
- Denial of Claims notices
- Quality improvement surveys
- Requests for additional information
- Payment of claims notices
The Solution:
Confidential Health Information Act

- SB 138 (Hernandez) – the Confidential Health Information Act (CHIA)
- Passed and signed in 2013
- Took effect January 1, 2015
How Does CHIA Work?

1. Person submits confidential communication request (CCR) to insurer verbally or in writing.

2. Person must provide an alternate address and/or preferred form of communication as part of CCR.

3. Insurer has 7 or 14 days to implement.

4. CCR lasts until the person sends in another one or tells the insurer that he/she wants to cancel it.

5. The CCR does not limit provider from talking to patient or patient’s insurer.
How Does CHIA Work?

Once the Confidential Communications Request is in effect:

1. Insurer must block out person’s information from documents sent to main policy holder.
2. Insurer will send the information directly to person instead.
Who Can Protect Their Information?

- People who fear a parent/guardian will find out medical services obtained
  - Teens 12-18 yrs old covered by a parent’s insurance
  - Young adults 18-26 covered by a parent’s insurance
- People who fear their spouse will find out
What Will it Block?

**CHOICE 1: SENSITIVE SERVICES**

- STI services
- Contraceptive services
- Sexual assault services
- Mental health
- Drug treatment
What Will it Block?

CHOICE 2: EVERYTHING

Patient must state that disclosure of any of their medical information could lead to harassment or abuse.

The insurance company is NOT allowed to ask why or for details.
Questions?

Examples of Frequently Asked Questions:

- How old does someone have to be to submit a CCR?
  - No age floor or ceiling.
- What about co-pays? Who is responsible for paying those?
  - The patient is still responsible.
- What obligations does this put on providers of care?
  - None, but some choose to help their patients with CCRs.
HELPING PATIENTS KEEP IT CONFIDENTIAL

Patient and Provider Resources
KEEP IT CONFIDENTIAL.

Your health insurance plan does NOT keep your health information private unless...

YOU TAKE ACTION.

If you have health insurance under another person’s health plan—like your parent or spouse—Your health plan will send them information on WHERE and WHEN you access health care and WHAT health care services or tests you receive.

If you want to Keep it Confidential—submit a Confidential Communication Request to your health plan. They will have to accept it, NO QUESTIONS ASKED if you:

1. Know your health plan and policy number
2. Contact your health plan
3. Submit a confidential communications request

KEEP IT CONFIDENTIAL is a project of the California Family Health Council, National Center for Youth Law, and the ACLU. ©2014 All rights reserved. The images used on this website are for illustrative purposes only; any person depicted in these images is a model.
As providers you have an important role to play in safeguarding your patient’s private health information. The resources below were developed to support providers interested in educating their patients about their confidentiality rights and helping them utilize new privacy protections. All patient education and health center staff training materials were developed in partnership by the ACLU of California, California Family Health Council and the National Center for Youth Law and are available to download for free.

RESOURCES

[Image of wallet card]

- Wallet Card
- Wallet Card (with Bleeds + Crop Marks)

[Image of flyer]

- Flyer 1
- Flyer 1 (with Bleeds + Crop Marks)
- Flyer 2
- Flyer 2 (with Bleeds + Crop Marks)
- Flyer 3
- Flyer 3 (with Bleeds + Crop Marks)
- Flyer 4
- Flyer 4 (with Bleeds + Crop Marks)
KEEP IT CONFIDENTIAL.

Confidential Communications Request

As of January 1, 2015, California law requires insurers to honor this request.

TO:

Name of Your Health Insurance Company:

FROM:

Your Name:

Date of Birth:

Your Insurance Member #:

I am requesting you to request the following information about your health insurance using the following process:

1. Identify the information you need. This information includes:
   - Any medical information associated with the sensitive topics mentioned above.
   - Any information about the services provided by your health care provider.
   - Any information about the services provided by your insurance company.

2. Submit your request in writing or electronically to the following address:
   - Email the following email address:
   - Send the following communication methods:
   - U.S. Mail at the address below:

3. Your request will be reviewed by the insurer and a decision will be made within 30 days.

IMPORTANT: The following two sections MUST be completed:

1. If communication cannot be sent in the above selected format/medium, please provide details below:

2. Is there a phone number or email we can use to contact you if we have questions regarding this request?

Signature:

Date:

As of January 1, 2015, California law requires health insurers to specify the Confidential Communications Request (CCR) form. Under the CCR form, the insurer must take reasonable steps to protect the confidentiality of the information provided. The CCR form must be completed and signed by the insurer, and the insurer must notify the individual that the information will be transmitted to the insurer.

If you have any questions or concerns regarding this request, please contact your insurance company.

myhealthmyinfo.org
Implementation Progress

- Patient and provider resources:
  - myhealthmyinfo.org
- Tracking patients’ CCRs
- Advocacy with insurance providers
- Complaints to insurance providers and Dept. of Managed Health Care
Thank you!

Ruth Dawson

- rdawson@aclusocal.org
- 213 977-5258