



Confidential Communications Requests: Comparing the Requirements under HIPAA and California Senate Bill 138

National Center for Youth Law

Background

Federal regulations implementing the HIPAA Privacy Rule establish the right of health insurance enrollees and insured clients to submit a confidential communication request to their health insurance providers. A confidential communication request is a request that the insurance provider limit disclosures of confidential patient information to third parties, such as the insurance plan holder. The federal regulations impose certain obligations on health insurance providers when responding to such requests.

California Senate Bill 138 (2013), effective January 1, 2015, imposes new obligations on health plans and insurers in California that change when and how plans and insurers must respond to “confidential communications requests” (CCRs) from their enrollees and insured clients. Health plans and health insurers must be ready to implement these new obligations starting January 1, 2015 or risk liability.

HIPAA and California Senate Bill 138: Comparing CCR Requirements

The following grid highlights some differences between the obligations that health plans and insurers have under HIPAA as compared to their obligations under California’s Senate Bill 138 as of January 2015.

	HIPAA	California Senate Bill 138
Individual’s right to submit confidential communications request	Insurers and plans must permit individuals to request that the insurer send communications containing protected health information “by alternative means or at alternative locations.” <i>45 C.F.R. § 164.522(b)(1)(ii).</i>	Insurers and plans must permit individuals to submit a confidential communications request. <i>Civ. Code § 56.107(a)(1); Ins. Code § 791.29(a)(1).</i>
Insurer/Plan’s obligation to respond to requests regarding danger	Insurers and plans must accommodate a “reasonable” request for confidential communications if the individual “clearly states that disclosure of all or part of the information could endanger the individual.” <i>45 C.F.R. §</i>	Insurers and plans must accommodate the request if an individual “clearly states” that disclosure could “endanger” the individual, regardless of the type of care received. <i>Civ. Code § 56.107(a)(1); Ins. Code § 791.29(a)(1).</i>

	<i>164.522(b)(1)(ii).</i>	
Insurer/Plan’s obligation to respond to requests regarding “sensitive services” information	HIPAA does not require insurers or plans to accommodate such requests.	Insurers and plans must comply with the request if an individual “clearly states” that the communication will disclose information pertaining to receipt of “sensitive services.” <i>Civ. Code § 56.107(a)(1); Ins. Code § 791.29(a)(1).</i>
Insurer/Plan able to require specific format for request	Insurers and plans may require the individual to make a request for a confidential communication described in paragraph (b)(1) of this section in writing. <i>45 C.F.R. § 164.522(b)(2)(i).</i>	Insurers and plans may require the individual to make a request in writing or by electronic transmission. <i>Civ. Code § 56.107(a)(2); Ins. Code § 791.29(a)(2).</i>
Insurer/Plan able to require certain contents in request	Insurers and plans may require that a request contain a statement that disclosure of all or part of the information to which the request pertains could endanger the individual. <i>45 C.F.R. § 164.522(b)(2)(iv).</i>	Insurers and plans may require that a confidential communications request contain a statement that the request pertains to either medical information related to the receipt of sensitive services or that disclosure of all or part of the medical information could endanger the subscriber or enrollee. The insurer shall not require an explanation as to the basis for a subscriber's or enrollee's statement that disclosure could endanger the subscriber or enrollee. <i>Civ. Code § 56.107(a)(3); Ins. Code § 791.29(a)(3).</i>
Insurer/Plan able to Condition provision of accommodation	<p>Insurers and plans only must accommodate “reasonable” requests.</p> <p>Insurers and plans may condition the provision of a reasonable accommodation on:</p> <p>(A) When appropriate, information as to how payment, if any, will be handled; and</p> <p>(B) Specification of an alternative address or other method of contact. <i>45 C.F.R. § 164.522(b)(2)(ii).</i></p>	<p>Insurers and plans must accommodate requests to receive communication in a specific form or format but only if the communication is readily producible in the requested form or format. <i>Civ. Code § 56.107(a)(2); Ins. Code § 791.29(a)(2).</i></p> <p><i>(e.g. If an individual requests that EOBs be sent to the individual by text message, but the insurer does not have the capacity to send EOBs by text, the insurer is not required to send messages by text and can send the EOB to the alternate address provided instead.)</i></p>

Definitions	There is no definition of “endanger” or “reasonable request” in HIPAA regulations.	The following terms are defined by SB 138: <ul style="list-style-type: none"> • Sensitive Services • Endanger • Enrollee • Insured • Confidential Communications Request • Subscriber (See <i>CivCode</i> §56.05 and <i>Ins. Code</i> §791.02))
Implementation specifications		
Implementation Date	Current	Effective January 1, 2015
Length of time insurer has to implement once request is made	HIPAA does not address this.	Insurers must implement an individual’s request within seven calendar days of receiving it if submitted by phone or electronic transmission and within 14 calendar days if submitted by first-class mail. <i>Civ. Code</i> §56.107(a)(5); <i>Ins. Code</i> § 791.29(a)(5).
Duration of Request	HIPAA does not address this.	Once implemented, a request remains in effect until an individual expressly revokes it or submits a new request. <i>Civ. Code</i> §56.107(a)(4); <i>Ins. Code</i> §791.29(a)(4).
Obligation to respond to a consumer’s questions	HIPAA does not address this.	The health care service plan shall acknowledge receipt of the confidential communications request and advise the subscriber or enrollee of the status of implementation of the request if a subscriber or enrollee contacts the health care service plan. <i>Civ. Code</i> § 56.107(a)(5); <i>Ins. Code</i> §791.29(a)(5).