



New Insurance Confidentiality Protections for Californians Starting January 1, 2015

Starting January 1, 2015, Californians insured under another person's health insurance policy will have new confidentiality protections. These protections will allow them to submit a confidential communications request form to receive communications from their health plan directly regarding their receipt of sensitive services or any service if they feel disclosure of related information to the main policy holder could cause harm.

Background

Insurance plans often send communications to insurance policy holders regarding payments and claims about services rendered under their plans. These communications can include information about the types of health services provided to patients insured by the plan as well as information about the medical professional who provided the care. The communications, which may come in the form of an explanation of benefits letter (EOB) or denial of claims notice can trigger disclosure of confidential information to the policy holder without the patient's knowledge or consent.

The inability to guarantee confidentiality for individuals with health insurance in another person's name can lead to harm. Some minors and adults may choose not to seek care for sensitive services such as STDs, birth control, drug treatment and mental health services for fear a parent or partner will find out. Survivors of domestic violence may choose not to seek medical or mental health services knowing an abusive spouse may have access to this information. In addition, patients with private insurance may choose to enroll in public health insurance plans for sensitive services in order to avoid possible privacy breaches, unnecessarily shifting costs to the state.

Individuals covered by a family member's insurance plan are often adolescents, young adults (the ACA required that health plans and insurers offer dependent coverage for children up to age 26) and current or former spouses or partners.

In early 2013, California State Senator Ed Hernandez introduced Senate Bill 138 (SB 138) – the Confidential Health Information Act – to address the problem. The bill, co-sponsored by the ACLU of California (ACLU), California Family Health Council (CFHC) and the National Center for Youth Law (NCYL), was signed into law by Governor Brown in the fall after the measure cleared both legislative houses. Protections provided under SB 138 will take effect on January 1, 2015.



New Protections Included in SB 138, Effective Starting January 1, 2015

SB 138 does the following:

- Allows individuals with health insurance under another person's policy to submit a "confidential communications request" to their health care service plan or health insurer. A confidential communication request is a request that communications be sent to the patient rather than policy holder at an alternate address or through an alternate mode of communication such as email.
- Requires the plans and insurers to comply with the confidential communication request in two situations:
 - If the individual is requesting confidential communication regarding their receipt of *sensitive services*. "Sensitive services" is defined by the law to include, among other services, mental health counseling, reproductive health services, STD services, sexual assault services, and drug treatment.; or
 - If the individual states that disclosure of all or part of the information that might be revealed in an insurance communication could endanger the patient, regardless of the type of health care sought.
- Requires plans and insurers to promptly implement confidential communications requests to ensure accountability and provide assurance that requests will be honored
- Does not interfere with the ability of health providers to communicate with patients or insurers.

Next Steps

In order to trigger the confidentiality protections offered by SB 138, patients will have to submit confidential communications requests to their health plans and insurers. This will require patient education and outreach. Provider agencies and individual providers can play a key role educating their patients and clients and facilitating submission of requests.

Over the next months, the California Family Health Council, the National Center for Youth Law, the ACLU and other organizations will be developing more information about the new law as well as working on implementation resources and strategies for patients and organizations.

If you have any questions about SB 138, would like to stay updated on SB 138 implementation and/or receive training and education materials, please contact us at www.cfhc.org.