

**PRESENTATION AT THIRD ANNUAL HIPAA SUMMIT
STATE PRIVACY REGULATION: CALIFORNIA¹
OCTOBER 26, 2001**

CONFIDENTIALITY OF MEDICAL INFORMATION ACT
(Civil Code sections 56-56.37)

A. Scope (sec. 56.05 and 56.06):

Covers “medical information”

Applies to:

“Providers of health care,” including facilities and any corporation organized to maintain medical information to make it available to patients or providers for purposes of diagnosis and treatment

“Contractors” (medical groups, practice associations, pharmaceutical benefits managers, or medical service organizations that are not a health care plan or provider or an insurer)

“Health care service plans” (any plan that arranges or pays for health care services in return for a prepaid or periodic charge)

Some provisions apply to employers

B. Restrictions on disclosure (sec. 56.10):

General prohibition against providers, contractors, health plans or their affiliates intentionally sharing, selling or otherwise using medical information for any purpose not necessary to provide health care to the patient, unless patient authorizes disclosure

1. Exceptions to authorization requirement:

a. Provider or plan **may** disclose medical information:

To other providers, plans, contractors or health care professionals or facilities, for purposes of diagnosis or treatment.

To insurer, employer, plan, contractor or other entity responsible for payment, to extent necessary for determining and making payment.

To entities that provide administrative services.

For public health and research purposes, but further disclosure prohibited.

Limited disclosure to employers in connection with claims or determining fitness to perform.

b. A provider, plan or contractor **shall** disclose medical information if compelled by:

Court order; judicial, administrative or arbitration order or subpoena; or search warrant.

¹Presented by Susan E. Henrichsen, Deputy Attorney General, State of California. This is a brief and general summary of relevant California law. The contents do not constitute the legal advice or opinion of the author or her office and should not be relied upon as such.

Patient or patient's representative.

When otherwise specifically required by law.

2. Restrictions on redisclosure:

Where information is received pursuant to authorization or permissive disclosure exception (listed under B.1.a. above), further disclosure prohibited except as specifically permitted.

3. Where patient refuses authorization:

No provider or plan may require a patient to sign an authorization as a condition of receiving health care services.

C. Access:

Patient access to medical information held by providers upon written request: inspection within 5 days, copy within 15 days (Patient Access to Health Records Act, Health and Safety Code sections 123110; see IIPPA for access and correction of information held by insurers, agents and insurance-support organizations)

D. Remedies (sec. 56.35 and 56.36):

Cumulative to any others.

Private right of action: compensatory damages and punitives up to \$3,000 for disclosure violations where patient has sustained economic loss or personal injury; nominal damages of \$1,000 plus actual damages for negligent disclosure violation.

Any violation resulting in economic loss or personal injury is misdemeanor.

Civil penalty provisions ranging from \$2500 per violation for negligent violation to \$25,000 per violation for third knowing and willful violation to \$250,000 per violation for knowing and willful violation for financial gain.

E. Miscellaneous:

Special provisions include general prohibition on disclosure of HIV status (sec. 56.31) and disclosure of results of genetic testing (sec. 56.17) without patient authorization.

INSURANCE INFORMATION AND PRIVACY PROTECTION ACT
(Insurance Code sections 791-791.27)

A. Scope (sec. 791.01 and 719.02):

Covers "personal information" gathered in connection with determining eligibility or servicing insurance for personal, family or household needs.

Applies to:

Insurance institutions and agents.

"Insurance-support organizations" (any person or entity in the business of assembling or collecting information for purposes of providing it to an insurer or agent for insurance transactions).

B. Restrictions on disclosure (sec. 791.13):

No disclosure without written authorization.

Exceptions to authorization requirement:

To perform business, professional or insurance functions (further disclosure prohibited unless otherwise permitted or is reasonably necessary for the recipient to perform its function for the disclosing entity).

To determine eligibility for benefits or payment.

For detecting fraud or criminal activity.

Other regulatory, judicial, audit or law enforcement purposes.

For research, provided no individual may be identified in any report (further disclosure prohibited).

For marketing purposes, to a person who agrees the only use will be in connection with marketing a product or service, provided:

No personal or medical information related to character, habits, mode of living or general reputation, or classification derived from such, is disclosed; or

The individual has been given opportunity to direct personal information not be disclosed for marketing purposes and has not so directed.

For marketing purposes, to an affiliate for marketing an insurance product or service provided the affiliate agrees not to disclose the information for any other purpose or to an unaffiliated person.

Other audit, claims experience and review operations

C. Notice (sec. 791.04):

Requires notice of information practices to all applicants and policyholders in connection with insurance transactions:

Timing: varies depending on transaction and source of personal information collected - generally no later than delivery of policy, policy renewal date or at time of request for reinstatement or change in benefits.

Content: generally, type of information collected and sources, type of disclosures, and access rights.

D. Access and Correction (sec. 791.08 and 791.09):

Access required upon written request: Within 30 business days, inform individual of the nature and substance of the information and permit the individual to see and copy the information in person, or receive by mail, whichever the individual prefers; provide summary of procedures for requesting correction, amendment or deletion; and, in some cases, identify sources and those to whom information has been disclosed.

Must correct, amend or delete information within 30 business days of written request or notify individual of the refusal and the reasons therefor, and the individual's right to file a statement.

E. Remedies (sec. 791.15-791.22):

Administrative procedure: cease and desist order and monetary fine for violation.

Private right of action: for “appropriate equitable relief;” damages for disclosure violation but no monetary award in excess of actual damages.

INFORMATION PRACTICES ACT
(Civil Code sections 1798 et seq.)

A. Scope:

Covers personal information and applies to government agencies.

B. Restrictions on disclosure:

No disclosure without written authorization given no more than 30 days prior to disclosure, or subject to time limit agreed to in the consent.

Exceptions to authorization requirement:

Performance of agency duties.

Court or judicial process or for law enforcement.

C. Access and Correction:

Inspection generally required, and copy provided within 15 days of inspection; may charge fee.

May request amendment in writing; must, within 30 days, make correction or advise individual of refusal and reason therefor.

D. Remedies:

Civil action allowed for injunction, actual damages.

**HIGHLIGHTS OF DIFFERENCES BETWEEN HIPAA AND
CONFIDENTIALITY OF MEDICAL INFORMATION ACT (CMIA)
(California Civil Code sections 56-56.37)**

<u>Subject</u>	<u>HIPAA</u>	<u>California CMIA</u>
Authorization for disclosure	Generally required, including for treatment, payment, operations	Not required for treatment, payment, operations
Business associates	Must contract with business associates	No equivalent of “business associates,” no specific contract requirement
“Minimum necessary”	Required as a general standard	Rough equivalent but required only with respect to a few specific disclosures
Notice of information practices	Required	Not required (but is required of insurers by California Insurance Info. & Privacy Prot. Act)
Disclosure for marketing	Permitted, with some conditions and limitations, without patient authorization	Not permitted without patient authorization
Security	Specific requirements	Not addressed comprehensively or in detail
Conditioning treatment on authorization	Permitted (but not with respect to non-routine uses)	Not permitted
Penalties and remedies	No private right of action	Private right of action; higher potential penalties in law enforcement action