

Procedures



The following procedures govern individual access to Medi-Cal records.

Requests for Access/Access Form

All requests for access to individual health information must be made **in writing** using the Medi-Cal Request for Access Forms, DHS 6236 (for the individual) and 6237 (for the personal representative). Each DHS health plan should document the process for providing access to its health plan beneficiaries, which should include the titles of persons or offices responsible for receiving and processing requests for access by individuals.

Many of the DHS health plan beneficiaries and provider patients will be directed by their Notices of Privacy Practices to contact the Privacy Office at (916) 445-4646 for information regarding their privacy rights, including access to their health information. For Medi-Cal, the phone line goes to EDS, where the EDS telephone staff field requests for access.

Verification of Individual Identity

In order to ensure that Medi-Cal is protecting individual health information, individuals requesting to inspect and copy records must verify their identities. Individuals will be requested to include their beneficiary ID number, date of birth, and date of death, in probate cases. **A request for access must also be accompanied by a photocopy of the California driver's license, an identification card issued by the Department of Motor Vehicles, or any other document that appears to be valid and establishes identity.** It is up to the individual program person designated to process access requests to verify the identity of individuals requesting access to their own records. Documents containing signatures are preferable, since the signature on the request form may be checked against the identification card. The following additional documents may be considered:

- Copy of the Individual's Birth Certificate;
- Beneficiary Identification Card;

- Managed Care Card; or
- State or Federal Employee ID Card/Check Cashing ID Card.

A notarized signature may be provided in lieu of a copy of one of the listed identifiers.

When a personal representative requests access to records of an individual, his or her legal authority to make medical decisions must be verified as well as his or her identity, using the above process. Verification of legal authority to make health care decisions would include documentation establishing conservatorship, legal guardianship, or power of attorney for health care decision-making. For a natural parent of a minor child, a birth certificate should suffice. If the parents are divorced proof of custody must be provided. A copy of the death certificate should be required for access to the records of decedents, as well as proof of executorships of the will/administration of the estate. If there is no will and/or no probate, proof that the requestor is next of kin of the decedent may suffice.

Address Verification

Individuals requesting to be sent copies of records by mail must also verify their address. Requestors must include proof of their address such as a recent electricity, gas or phone bill, driver's license, rent receipt, or other documentation showing the requestor's name and address.

Right to Inspect Records

In addition to the right to request a copy of their health record, individuals may choose to inspect their records without cost. Under the IPA, inspection of records must be provided at a location near the residence of the individual or by mail, whenever reasonable.

Individuals may designate a person of their choosing to inspect the records. This should apply to in-person inspections. Records should generally be mailed to the address of the requesting individual, for security reasons. However, records may be mailed to attorneys for Medi-Cal beneficiaries, on request.

As most Medi-Cal programs are headquartered in Sacramento, a convenient location for inspection of records will not be

available for most requestors. Whenever a location near the residence of the individual is unavailable, Medi-Cal will copy and mail the information requested. Programs may choose to bill for postage.

Format of Information Provided

Medi-Cal must provide the individual with access to the PHI in the form or format requested by the individual, if it is readily producible in such form or format. If not available or readily producible in the requested format, Medi-Cal must provide a readable hard copy form or other form or format as agreed to by Medi-Cal and the individual.

Medi-Cal may provide the individual with a summary of the PHI requested, in lieu of providing access to the PHI or may provide an explanation of the PHI to which access has been provided, if the individual agrees in advance to such a summary or explanation; and the individual agrees in advance to the fees imposed, if any, by Medi-Cal for such summary or explanation.

Medi-Cal must, in disclosing information, delete confidential information relating to another individual, which may be contained in the record.

Time and Manner of Access to Records

Medi-Cal must provide the access as requested by the individual in a timely manner, including arranging with the individual for a convenient time and place to inspect or obtain a copy of the PHI, or mailing the copy of the PHI at the individual's request.

Medi-Cal must act on a request for information that is readily accessible within 30 days after receipt of the request from the individual or his or her representative. If the request is granted, in whole or in part, Medi-Cal must inform the individual of acceptance and provide the access requested. If the request is denied, in whole or part, Medi-Cal must provide the individual with a written denial according to the criteria for denial of access. If the request is for PHI that is not maintained or readily accessible on-site, Medi-Cal must inform the individual of acceptance of the request, but has 60 days from the receipt of the request to act on it.

When the individual has inspected the records, copies of all or part of the record inspected should be provided within 15 days of the inspection, when requested. (Civil Code §§1798.34 (b))

Denial of Access to Records

Medi-Cal can deny access in the following categories: (A) No right to Access/Not Subject to Review and (B) Denial of Access/Subject to Review by a Health Care Professional.

No Right to Access/Not Subject to Review (45 C.F.R §164.524 (a) (2))

An individual does not have the right to access:

- Psychotherapy notes;
- PHI compiled in anticipation of, or for use in, civil criminal, or administrative actions or proceedings;
- PHI maintained by Medi-Cal that is subject to or exempt from certain provisions of the Clinical Laboratory Improvements Amendments (CLIA) of 1988;
- PHI requested by an inmate, maintained by a correctional institution, or by a provider on behalf of the correctional institution, if obtaining the information would jeopardize the health, safety, security, custody, or rehabilitation of the individual or other inmates, or the safety of any officer, employee, or other person at the correctional institution or responsible for transporting the inmate; or
- PHI obtained from someone else, other than a health care provider, under a promise of confidentiality, but only if access would be reasonably likely to reveal the source of the information.

Denials of Access Subject To Review (45 C.F.R. §164.524 (a)(3))

- Medi-Cal may deny access when a licensed health care professional determines, in the exercise of professional judgment, that the access is reasonably likely to endanger the life or physical safety of the individual or another person;
- The PHI makes reference to another person, and a licensed health care professional, in his or her professional judgment,

determines that access is reasonably likely to cause substantial harm to such person; and

- The request for access is made by the individual's personal representative, and a licensed health care professional, in his or her professional judgment, determines that access by such personal representative is reasonably likely to cause substantial harm to the individual or another person.

When Medi-Cal denies access, in whole or in part, it must:

- Give the individual access to any other PHI requested, after excluding the PHI which Medi-Cal has a ground to deny;
- Give the individual a timely written denial;
- The denial must be in plain language and contain the basis for denial, a statement as to whether the denial is subject to further review including how this right may be exercised;
- A description of how the individual may submit a complaint to Medi-Cal or the Secretary of Health and Human Services—including the name, title, and telephone number of the contact person or office; and
- If Medi-Cal does not maintain the PHI requested, and knows where the information is, the Medi-Cal program must tell the individual where to request access.

Review of Denials by a Licensed Health Care Professional

When Medi-Cal denies access in instances where the denial is reviewable, and an individual requests review of the decision, Medi-Cal must:

- Designate a health care professional to act as a reviewing official in the case. The reviewing official cannot be someone who participated in the original denial decision;
- Promptly refer the individual's request for review to the designated reviewing official;
- Ensure that the designated reviewing official issues a decision within a reasonable period of time to uphold or overturn the denial;
- Promptly notify the individual, in writing, of the reviewing official's decision; and

- Act according to the reviewing official’s decision in providing or denying access to information.

Fees Charged for Access

If an individual requests a copy of the PHI or agrees to a summary or explanation of such information, Medi-Cal may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:

- Copying, including the cost of supplies for and labor of copying, the PHI requested by the individual;
- Postage, when the individual has requested the copy, or the summary or explanation, be mailed; and
- Preparing an explanation or summary of the PHI, if agreed to by the individual.

No charges, other than postage, should be levied for individuals who wish to inspect a copy of their records and are mailed records, because there is no convenient location for inspection.

Medi-Cal Records Available for Access

Records Held	Responsible for gathering records when access requests are received
Claim Detail Report (CDR) Information up to 10 years old.	EDS has 3 years of current and 3 years of aged CDR data readily available. For the additional 4 years of back data Provider Change Management Branch will need to request an ad hoc report be run to restore this data for printing.
CDR Information dating back beyond 10 years from the current date.	Retained by TPL in microfiche and/or cold storage.
Treatment Authorization Requests (TAR) and Case Management Records.	Held by Medi-Cal Operations Division.
Managed Care records including premium payments, enrollment and disenrollment records, and complaint investigation files.	Held by the Medi-Cal Managed Care Division. Note that individual medical records are maintained by the various managed care plans.

Telephone Request for Access

Telephone requests for access to PHI may be received from:

- The individual;
- Personal Representative;
- Family and/or friends of individual;
- Advocate Groups;
- Medi-Cal Providers;
- Victims of Crimes;
- Dept. of Justice or Dept. of Alcohol and Drug
- Legal Aide;
- Welfare Departments;
- Social Security Administration;
- Legislative Staff;
- Centers for Medicare and Medicaid Services;
- Other State Medicaid Agencies; and
- Health Insurances Plans.

Individual Beneficiary

If the beneficiary calls directly for PHI regarding his or her use, ask for information on the Beneficiary Identification Card (BIC), Social Security Number (SSN), date of birth, phone number and MEDS address to verify identity. If the caller is a representative of the beneficiary, Medi-Cal must verify a personal representative's authority in giving out information about Medi-Cal beneficiaries.

Verification of authority may be difficult to obtain over the phone. The decision to disclose PHI over the phone will be made by the supervisor based on his or her own judgment and past experience.

Legal Basis of Disclosures

Under the Privacy Rule, Medi-Cal may disclose PHI to a family member, other relative or a close personal friend of the Medi-Cal beneficiary or any other person identified by the beneficiary, where PHI is directly related to the person's involvement with

the beneficiary's care or payment. If the Medi-Cal beneficiary is available, Medi-Cal must first obtain the beneficiary's consent before disclosing information or reasonably infer from the circumstances that the beneficiary does not object. In an emergency situation or where the beneficiary is incapacitated or not available, the supervisor may use professional judgment to determine whether the disclosure is in the best interests of the beneficiary. If it is, Medi-Cal may disclose only the PHI directly related to the person's involvement with the individual's health care. (45 CFR 2 §164.510 (b))

The IPA allows personal information to be disclosed with the prior written consent of the individual, to the duly appointed guardian or conservator of the individual or to a person representing the individual if there is documentation that such person is the authorized representative of the individual, if there are compelling circumstances which affect the health or safety of the individual, or to a legislative staff member where the legislator provides reasonable assurance that he or she is acting on behalf of the individual. (Civil Code §1798.24).

With all these rules in mind, Medi-Cal may disclose PHI in response to telephone requests in the following manner; but only if the disclosure is directly related to the administration of the Medi-Cal program.

Levels of Telephone Requests for Information

Level 1

If there is an emergency, the beneficiary is not available and the beneficiary needs immediate care, or is facing other emergent situations causing severe financial or emotional consequences:

- Action – Identify the individual to the best of your ability and find out the relation of the individual to the beneficiary and why the information is needed.
- Result – Consult with your supervisor, then provide the minimum necessary amount of information needed to provide emergency care or help resolve the severe financial or emotional situation.

Level 2

If the situation is critical but there is enough time to receive proper authorization:

- Action – Require a completed Authorization Form from the beneficiary before disclosing information.
- Result – Provide the minimum necessary amount of information requested once the authorization form is received.

Level 3

Information is needed and there is time to receive all required documentation:

- Action – Require a completed Authorization Form and proof of legal relationship such as parent, conservator, executor, legislator acting on behalf of the beneficiary.
- Result – Provide the minimum necessary amount of information requested.

Responding to Beneficiary Calls for Access to Records

When answering calls regarding beneficiary or personal representative requests for access, ask if the beneficiary is enrolled in a managed care plan, and, if so, explain that he/she may need to contact the managed care plan for access to medical records. If the beneficiary needs assistance in calling his/her managed care plan, he or she should be referred to (888) 452-8609.

Also ask the caller if the access request is regarding a personal injury, estate recovery, or worker's compensation case. If the answer is "yes," the caller should be referred to the Third Party Liability Branch at (916) 650-0490.

Forms to be Sent

Requests received by EDS or the Privacy Office for access to Medi-Cal beneficiary records will be responded to by mailing either the Request for Access to PHI Form (DHS 6236) for an Individual or the Request to Access PHI by Parent, Guardian or Personal Representative Form (DHS 6237) for someone other than the individual. These forms include the EDS return address and an EDS contact phone number.

Third Party Liability Requests

If the request for access is in regard to a pending case for estate recovery, personal injury, or workers' compensation, the beneficiary or personal representative should be referred to the Third Party Liability (TPL) Branch at (916) 650-0490.

Requests from Attorneys

If a request is made by an attorney through subpoena or other means for the amount of money which Medi-Cal has paid for services in connection with a personal injury, estate recovery, or worker's compensation claim, a request for access form does not need to be filled out. These disclosures are considered to be directly connected with the operations of the Medi-Cal program. The requestor should be referred to the TPL. If the requestor wants the complete CDR, then the beneficiary has to fill out and sign the request for access form.

Receipt of Request for Access

Upon receipt of the access request form, EDS will verify that the requestor has sent in appropriate identification and payment. If the correct information and/or payment are not included, EDS will send the incomplete form letter, within 3 business days, requesting additional information and/or payment. Checks should be copied and then forwarded to DHS Accounting when all required information is submitted and complete.

The beneficiary may indicate that he/she would like his/her records sent to a person of his/her choosing by marking the appropriate box on page 2 of the form and including the name, telephone number, address, and relationship of the person to the beneficiary. The records can then be sent directly to the person indicated, including an attorney.

If there is any question about the adequacy of the information received from the beneficiary or personal representative, the issue should be referred to the EDS Privacy Officer who should determine if the information received meets the minimum requirements for access.

Minimum requirements include verification of identity and address, and payment as indicated on the form. For personal representatives minimum requirements would include verification of the individual's authority to represent the