

HIPAA Privacy Rule CLIN-203: Special Privacy Considerations

I. Policy

A. Additional Privacy Protection for Particularly Sensitive Health Information

USC¹ recognizes that federal and California law require that certain categories of patient's Protected Health Information² receive additional privacy protections. HIPAA defers to the protections set forth in California and federal law with respect to:

- HIV test results
- Mental health results
- Substance abuse records
- Genetic information
- Minors (See the USC HIPAA Privacy Policy "*Personal Representatives for Patients*")

B. HIV Test Results – In General

In general, California law requires that HIV test results cannot be disclosed without specific, written authorization from the patient except to the patient's health care provider for purposes of diagnosis, care or treatment. Refer to the Procedure section for limited instances where a provider may disclose HIV test results without an authorization. Note that these provisions pertain just to HIV test results.

C. Mental Health Records – In General

California law provides special protections for mental health information, which includes psychotherapy notes, medication prescription monitoring, counseling session start and stop times, modalities/frequencies of treatment, results of clinical tests, or summaries of diagnosis, functional status, treatment plans, symptoms, prognosis, or progress recorded by mental health professionals.

¹ For purposes of the HIPAA Privacy Rule, USC includes USC Norris Cancer Hospital, Keck Hospital of USC, USC's employed physicians, nurses and other clinical personnel, those units of USC that provide clinical services within the School of Pharmacy, the Herman Ostrow School of Dentistry, Physical and Occupational Therapy as well as the Keck Doctors of USC, and those units that support clinical and clinical research functions, including the Offices of the General Counsel, Audit and Compliance.

² Protected Health Information is identifiable information that relates to an individual's past, present or future physical or mental health condition or to payment for health care.

In general mental health information may be shared among providers for the purposes of treatment. All other uses and disclosures require the specific authorization of the patient to disclose mental health information.

The state law that addresses the confidentiality of mental health information is known as the Lanterman-Petris-Short Act (“LPS Act”)³. Refer to the Procedures section for additional information on the use or disclosure of mental health information; additional questions should be referred to the Office of Compliance.

D. Substance Abuse Records – In General

Generally, the identity and records of the diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse treatment or prevention effort directly or indirectly assisted by the State Department of Alcohol and Drug Programs are confidential and may not be disclosed without the written consent of the individual⁴. Please refer to the Procedures section for specific exceptions of written authorization to release these records and refer any additional questions to the Office of Compliance.

E. Genetic Information – Special Note on Genetic Tests Results

In general, genetic information⁵ that is part of an individual’s medical record is protected by the same federal and state privacy laws that safeguard protected health information and as such requires a specific written authorization for uses/disclosures for purposes outside of treatment, payment or health care operations.

Under California law, USC Health Plans⁶ are prohibited from disclosing genetic test results without specific written authorization⁷.

³ California Welfare and Institutions Code section 5328 *et seq.*

⁴ The Lanterman-Petris-Short Act imposes specific restrictions on information obtained or generated by mental health services provided in an institutional setting or pursuant to a community mental health treatment program. This information is generally considered to be confidential and only may be released in accordance with the restrictions listed in the statute.

⁵ “Genetic Information” includes information regarding genetic tests, genetic tests of a family member, embryo, or fetus, and the diagnosis of a disease or disorder in your family members (also referred to as “family history”). It includes any analysis of DNA, RNA, chromosomes, proteins, or metabolic compounds that detect genetic mutations or chromosomal changes. This includes any request for, or receipt of, genetic services, or participation in research that includes genetic services, by the individual or the individual’s family members. *GINA- Genetic Information Nondiscrimination Act of 2008.*

⁶ USC’s self-insured health plans are the Medical Care Plan Number 520 (i.e., the USC Network Plan and the dental plan administered by Delta Dental) and the Health Care Pretax Payment Account Plan Number 521 (i.e., the PPA Plan).

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F. Minors – Special Note

Use and disclosure of protected health information associated with the care of minors should be administered using the same principles as consent for treatment.

Generally, a parent or guardian controls a minor’s privacy rights. However, there are a number of exceptions that apply in which a minor holds the right to consent and therefore controls all consequent privacy rights. Refer to the USC HIPAA Privacy Rule *Personal Representatives of Patients* policy for additional information.

II. Procedures

A. HIV Test Results

1. *HIV test results cannot be disclosed without an authorization except in the following limited circumstances:*

- a. To the subject or the subject’s legal representative
- b. To the subject’s health care provider or agent or employee of provider for purposes of diagnosis, care or treatment
- c. To health care provider who procures, processes, distributes or uses a human body part donated under Uniform Anatomical Gift Act
- d. To the “designated officer” of an “emergency response employee” as defined by Ryan White Comprehensive AIDS Resources Emergency Act
- e. To a procurement organization, a coroner or a medical examiner in conjunction with organ donation
- f. To a health care worker who has been exposed to the potentially infectious materials of a patient provided strict procedures for testing and consent are followed under California law
- g. Centers for Disease Control for mandated reporting re: diagnosed cases of AIDS
- h. Submission of monthly statistical data from blood banks and plasma centers regarding the detection or presence of HIV or viral hepatitis (but no identifiers should be included in reports)

2. *A physician shall not be liable for disclosing positive test results to a person:*

⁷ California Civil Code Section 56.17.

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- a. The physician reasonably believes is the spouse of the patient;
 - b. Whom the patient has shared hypodermic needles;
 - c. Who was a sexual or needle sharing partner of the patient if the patient has decided not to tell the partner or was unable to reach the partner; or
 - d. To a county health officer.
3. *When handling HIV test results it is important to remember:*
- a. There is no research exception, meaning that the subject must provide specific authorization to release HIV test results for research purposes. Review USC's template authorization, which requires that the patient initial the authorization to specifically permit such a disclosure.
 - b. The IRB may not waive authorization requirement to use or disclose HIV test results.
 - c. Once disclosed pursuant to an authorization, no further disclosure is authorized unless permitted by law or authorized by patient.
 - d. Civil and criminal penalties apply for negligent or willful breach of this provision.

B. Mental Health Records

1. *In general, mental health and development information may be released only with written authorization, however the following exceptions apply where authorization is not required:*
 - a. Program personnel: Communication of information to professionals within the facility who are providing services or appropriate referrals, or in the course of conservatorship proceedings; professionals outside the facility who have medical or psychological responsibility for the care of the patient; facilities that provide intensive treatment or comprehensive evaluations may disclose records and information that to an officer conducting a conservatorship investigation if the records may facilitate the investigation (documentation of the conservatorship proceedings is required).
 - b. Patient authorizes release of information to others: When the patient, with the approval of the physician, licensed psychologist, social worker with a master's degree in social work, or licensed marriage and family therapist, who is in charge of the patient, designates persons to whom information or records may be released, except that a physician, licensed marriage and family

- therapist, nurse, attorney, or other professional person does not have to reveal information that has been given to him or her in confidence by members of a patient's family.
- c. Qualified service organizations⁸: Communications to qualified service organizations including to:
- i. Professionals serving on "multidisciplinary personnel" teams⁹.
 - ii. Third party payors or other persons or organizations in connection with processing a claim for aid, insurance, or medical assistance to which the patient may be entitled.
- d. To appropriate federal, state, or local governmental agencies including:
- i. To government law enforcement agencies in specific circumstances¹⁰.
 - ii. To the California state Committee on Senate Rules or the state Committee on Assembly Rules for purposes of legislative action.
 - iii. To the California Youth Authority and California Adult Correctional Agency or any component thereof, as necessary to the administration of justice.
 - iv. To courts, as necessary to the administration of justice.
 - v. To authorized licensing personnel who are employed by or who are authorized representatives of the California Department of Health Services, and who are licensed or registered health professionals; and to authorized legal staff or special investigators who are peace officers who are employed by or who are authorized representatives of the state Department of Social Services as necessary to the performance of their duties.
 - vi. To any board which licenses and certifies professionals in the fields of mental health and developmental disabilities under California law, when the Director of Mental Health has reasonable cause to believe that a violation of any provision of law subject to the jurisdiction of such board has occurred and the records are relevant to the violation.

⁸ A qualified service organization is defined as a person or organization that provides services to a program, such as data processing, bill collecting, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, or services to prevent or treat child abuse or neglect, including training on nutrition and child care and individual and group therapy, and has entered into a written agreement with a program regarding confidentiality.

⁹ As defined in Welfares and Institutions Code § 18951(d) provided the information disclosed is relevant to the prevention, identification, management, or treatment of an abused child and the child's parents.

¹⁰ CA Welfare and Institutions Code § 5328

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- vii. For compilation and publication of statistical data pursuant to standards set by the Director of Mental Health for the State of California.
- viii. To a quality assurance committee established in compliance with Welfare and Institutions Code §§ 4070 and 5624.
- ix. To a qualified professional person, as defined by the Genetic Disease Unit, for the purposes of genetic counseling for blood relatives of the patient, upon the request of a blood relative. The patient must first be asked to give consent, but if he or she does not or cannot respond after reasonable attempts are made for a two-week period, the information may be released to the professional upon the request of the blood relative.
- x. To individual(s) whom the patient has threatened to harm and to law enforcement agencies that the patient's psychotherapist determines are needed for the protections of that individual(s), when in the opinion of the patient's psychotherapist the patient presents a serious danger of violence to such individual(s).
- xi. To individuals serving on an interagency case management council¹¹ to the extent necessary to perform its duties. This council must attempt to obtain the consent of the patient. If this consent is not given, the council must justify in the patient's medical record why these records are necessary for the work of the council.
- xii. To a designee of a human service agency serving older adults through an established multidisciplinary team, when an older adult client presents signs or symptoms of elder abuse or neglect. The information must be limited to whether or not the client is receiving services from any other county agency and must not include information regarding the nature of the treatment or services provided.
- xiii. In communications relating to the prevention, investigation, or treatment of elder abuse or dependent adult abuse.
- xiv. To a domestic violence death review team.
- xv. To the "protection and advocacy agency" (Protection and Advocacy, Inc.) established in California to fulfill the requirements and assurances of the federal Protection and Advocacy of the Mentally Ill Individuals Act of 1986 for

¹¹ As defined in the California Welfare and Institution Code § 5606.6.

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- the protection and advocacy of the rights of individuals identified as mentally ill¹².
- xvi. To the “designated officer” of an “emergency response employee” (as those terms are used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990) or from that designated officer to an emergency response employee, but only to the extent to comply with the Ryan White Act.
 - xvii. Medical records that contain information pertaining to mental health or disabilities protected under LPS Act may be released to researchers, provided that the Director of Mental Health or the Director of Developmental Services designates by regulation rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. In addition, each researcher, including employees of the facility maintaining the records, must sign a confidentiality oath as set forth in the Act.

C. Substance Abuse

- 1. *In general, substance abuse records may be released only with written patient authorization; however, the following exceptions apply where authorization is not required¹³:*
 - a. Program personnel: Communication of information between personnel who need such information to diagnosis, treat, or refer for treatment of alcohol or substance abuse if communications are within or between a program and the entity that has control over program do not require authorization.
 - b. Qualified service organizations: Communications between a program and a qualified service organization.
 - c. Crimes on program premises or against program personnel: Communications between program personnel and law enforcement in cases that are directly related to a patient’s commission of a crime on program premises or against program personnel or to a threat to commit such crime, as long as the communications are limited to the circumstances of the incident(s)¹⁴.

¹² Access to such information and records must be in accordance with the requirement set forth in California Welfare and Institutions Code § 4900 et seq.

¹³ 42 CFR Part 2

¹⁴ 42 CFR 2.12. 9(c)(5)

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- d. Child abuse reports: Reports of suspected child abuse and neglect under California law to the appropriate authorities¹⁵.
- e. Veterans' Administration and Armed Forces: Certain exceptions to the consent requirement apply to records and information maintained by the Veterans' Administration and Armed Forces¹⁶.
- f. Medical emergencies: Information may be disclosed to medical personnel who need the information to treat a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention¹⁷.
- g. Research activities: Medical records that contain information pertaining to alcohol or drug treatment and which are protected under federal law may be disclosed for research if the program director at the treatment facility determines that:
 - i. The recipient of the patient-identifiable information is qualified to conduct research;
 - ii. The researcher has a research protocol under which the patient-identifiable information will be maintained in accordance with specified security requirements;
 - iii. Patient-identifying information disclosed will not be redisclosed except back to the program from which that information was obtained;
 - iv. The recipient of the information has provided a satisfactory written statement that a group of three or more individuals who are independent of the research project has reviewed the protocol and determined that the rights and welfare of patients will be adequately protected, and the risks in disclosing the patient-identifiable information are outweighed by the potential benefits of the research.
- h. Audit and evaluation activities: Information may be disclosed to the following entities who are conducting an audit/evaluation:
 - i. An appropriate federal, state, or local governmental agency that provides financial assistance to the program or is authorized by law to regulate its activities
 - ii. A third party payer covering patients in the program
 - iii. A private person or entity that provides financial assistance to the program
 - iv. A peer review organization performing utilization or quality control review

¹⁵ 42 CFR 2.12 (c)(6)

¹⁶ 42 CFR 2.12(c)(1)

¹⁷ See 42 CFR 2.51(b) for other situations involving emergencies.

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- v. An entity authorized to conduct a Medicare or Medicaid audit or evaluation¹⁸
- vi. Court order information may be disclosed without consent pursuant to a court order

Additional References

California Health and Safety Code §§ 120975-21020, §11977; California Welfare & Institutions Code §§ 5328-5540; §§4070 and 5624; §5606.6, 4900 et seq; Cal Civil Code §56.104, §43.92; 42 C.F.R. Part 2

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¹⁸ See 42 CFR 2.53 for certain restrictions involving audit and evaluation activities.

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