

CalPERS Notice of Privacy Practices

Effective Date: Revised Effective: February 10, 2020

THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

If you have any questions about this notice, please contact CalPERS HIPAA Unit at **1-888-CalPERS** (or 1-888-225-7377) or P.O. Box 942715, Sacramento, CA 94229-2715.

Why We Ask for Information About You

The Information Practices Act of 1977 and the Federal Privacy Act require CalPERS to provide certain information to individuals who are asked to supply information. The information requested is collected pursuant to Government Code (Section 20000, et seq.) and is used for administration of the CalPERS Board's duties under the Public Employees' Retirement Law (PERL), the Social Security Act (SSA), and the Public Employees' Medical and Hospital Care Act (PEMHCA), as the case may be. Submission of the requested information is mandatory. Failure to supply the information may result in CalPERS being unable to perform its functions regarding your status. Portions of this information may be transferred to other governmental agencies (such as your employer), physicians, and insurance carriers but only in strict compliance with current statutes regarding confidentiality.

You have the right to review your CalPERS membership file. For questions concerning your rights under the Information Practices Act (IPA) of 1977, please contact the HIPAA Unit at P.O. Box 942715, Sacramento, CA 94229-2715.

How We Use Your Social Security Number (SSN)

Section 7(b) of the Privacy Act of 1974 (Public Law 93-579) requires any federal, state, or local governmental agency, requesting an individual disclose their SSN, inform the individual whether the disclosure is mandatory or voluntary; by which statutory or other authority the number is solicited; and what uses will be made of the number.

Section 111 of Public Law 101-173 requires group health plans to collect and provide member SSNs for the coordination of federal and state benefits. Furthermore, the CalPERS health program requires each enrollee's SSN for identification and verification purposes.

The CalPERS health program uses SSNs for the following purposes:

- Enrollee identification for eligibility processing and verification
- Payroll deduction and state contribution for state employees
- Billing of public agencies for employee and employer contributions
- Reports to CalPERS and other state agencies
- Coordination of benefits among health plans

- Resolution of member complaints, grievances, and appeals with health plans, and
- Uses and disclosures required by the federal Affordable Care Act (ACA), such as reports to employees and the Internal Revenue Service (IRS).

How We Safeguard Your Protected Health Information (PHI)

We understand that PHI about you is personal and CalPERS is committed to safeguarding the PHI in our possession. This notice applies to your PHI under CalPERS Health and Long-Term Care programs. The particular group health or long-term care plan in which you are enrolled may have different policies or notices regarding its use and disclosure of your PHI.

The remainder of this notice will tell you about the ways in which we may use and disclose PHI about you. It also describes your rights and our obligations regarding the use and disclosure of PHI.

PHI is any information created or received by a health care provider or health plan or long-term care plan that relates to your past, present, or future physical or mental health or condition, the provision of health care to you, or the past, present or future payment for your health care. However, such information is only PHI if the information identifies you or contains information that can reasonably be used to identify you. Such information is PHI during your lifetime and remains PHI for a period of 50 years after your death.

The Federal HIPAA Privacy Regulations (Title 45, Code of Federal Regulations, Sections 164.500, et seq.) require us to:

- Make sure PHI that identifies you is kept private
- Provide you with certain rights with respect to your PHI
- Give you this notice of our legal duties and privacy practices with respect to your PHI; and
- Follow the terms of the notice that is currently in effect.

How We May Use And Disclose Your PHI

The following categories describe different ways CalPERS may use and disclose your PHI. For each category of uses or disclosures, we will explain what we mean and give some examples. Not every use or disclosure in a category will be listed. All of the ways we are permitted to use and disclose information under HIPAA, however, will fall within one of the categories.

- **For Payment.** We may use or disclose your PHI for payment purposes, such as to determine your eligibility for benefits; to facilitate payment for the treatment and services you receive from health care providers; to determine the amount of your benefits; or to coordinate payment of benefits with other health or long-term care coverage you may have.
- **For Health Care Operations.** We may use and disclose PHI about you to operate CalPERS Health and Long-Term Care programs. The use and disclosure of PHI is necessary to run these programs and make sure that all of our enrollees receive quality care. For example, we may use and disclose PHI about you to confirm your eligibility and to enroll you in the health or long term care plan that you select; to evaluate the performance of the health or long term care plans in which you are enrolled; or to resolve a complaint, grievance, or appeal with the health plan or long term care

program. We may also combine PHI about many CalPERS Health and Long-Term Care benefit enrollees to assist in rate setting or underwriting; to evaluate plan or program performance; to measure quality of care provided; or for similar health care operations.

In some cases, we may obtain PHI about you from a participating health plan, provider, or third-party administrator for certain health care operations. If the PHI received is from others as part of our health care operations, the uses and disclosures are in compliance with these guidelines. We will, however, never use or disclose your genetic information for underwriting purposes.

- **For Treatment.** We may use or disclose PHI to a health care provider to facilitate medical treatment or services. For example, if your health care provider refers you to a specialist for treatment, we may disclose your PHI to the specialist to whom you have been referred, so the specialist can become familiar with your medical condition, prior diagnoses, treatment, or prognoses. It is more likely, though, that a health care provider would receive your PHI for treatment purposes from another health care provider rather than from us.
- **To Business Associates.** We may contract with third parties, known as Business Associates, to perform various functions or provide certain services on our behalf. Subcontractors of these third parties may also be our Business Associates in certain cases. For example, the entities who serve as third-party administrators for CalPERS Health or Long-Term Care programs are Business Associates. In order to perform these functions or provide these services, Business Associates may receive, create, maintain, use, and/or disclose your PHI for plan administration and other permitted purposes, after contractually agreeing to implement appropriate safeguards regarding your PHI. In addition, our Business Associates are required by law to protect PHI and comply with most of the same HIPAA standards that we do.
- **To the Plan Sponsor.** We will disclose your PHI to certain CalPERS employees for the purpose of administering health and long-term care plans. Those authorized employees, however, will only use or disclose your PHI as necessary to perform plan administration functions, or other functions required by HIPAA, unless you have authorized further use and disclosures. Your PHI cannot be used for employment purposes without your specific written authorization.
- **Incidental Uses and Disclosures.** There are certain other incidental uses and disclosures that may result from or in connection with an otherwise permitted use or disclosure, such as a use or disclosure related to providing services or conducting business. We use all reasonable efforts, however, to limit these uses and disclosures.
- **For Health-Related Benefits and Services.** We may use and disclose your PHI to tell you about health-related benefits or services, such as treatment alternatives, disease management, or wellness programs that may be of interest to you.
- **As Required by Law.** We will disclose PHI about you when required to do so by federal, state, and local law or regulation.

- **For Research.** We may use and disclose your PHI for research purposes. However, this use and disclosure requires your prior authorization, unless authorized by an Institutional Review Board (IRB). IRBs ensure CalPERS' research activities involve no more than the minimal risk to the privacy of the research subjects; involve information that is mostly anonymous and is subject to a data use agreement; or are solely used to prepare a research protocol.
- **To Avert a Serious Threat to Health or Safety.** We may use and disclose PHI about you when necessary to prevent a serious threat to your health and safety or the health and safety of the public or another person. Any disclosure, however, would only be to someone able to help prevent the threat.
- **Minimum Necessary Standard.** To the extent possible, when using or disclosing your PHI, or when requesting your PHI from another organization subject to HIPAA, we will not use, disclose, or request more than the minimum amount of your PHI necessary to accomplish the intended purpose of the use, disclosure, or request, taking into consideration practical and technological limitations.

However, the minimum necessary standard will not apply to:

- Disclosures to or requests by a health care provider for treatment
- Uses by you or disclosures to you of your own PHI
- Disclosures made to the Secretary of the U.S. Department of Health and Human Services (HHS)
- Uses or disclosures that may be required by law
- Uses or disclosures that are required to comply with legal regulations, and
- Uses and disclosures for which we have obtained your authorization.

Special Situations

- **Workers' Compensation.** We may release PHI about you for workers' compensation or similar programs, as authorized by law. These programs provide benefits for work-related injuries or illnesses.
- **Coroners, Medical Examiners, and Funeral Directors.** We may release PHI to a coroner or medical examiner. This may be necessary, for example, to identify a deceased person or to determine the cause of death. We may also release medical information about you to funeral directors as necessary to carry out their duties.
- **Military.** If you are a member of the armed forces, we may disclose PHI about you as required by military command authorities.
- **Health Oversight Activities.** We may disclose PHI to a health oversight agency for oversight activities authorized by law. These oversight activities include, for example, audits, investigations, inspections, and licensure proceedings. These activities are necessary for the government to monitor the health care system, government programs, and compliance with civil rights laws.

- **Public Health Activities.** We may disclose PHI to public health or government authorities for public health activities authorized by law. These include, for example, health investigations, health surveillance, and reporting of abuse, neglect, or domestic violence.
- **Lawsuits and Disputes.** If you are involved in a lawsuit or a dispute, we may disclose PHI about you in response to a court or administrative order. We may also disclose PHI about you in response to a subpoena, discovery request, or other lawful process by someone involved in the dispute, but only if you have been given proper notice and an opportunity to object.
- **Law Enforcement.** We may release your PHI if asked to do so by a law enforcement official in response to a court order, subpoena, warrant, summons, or similar process.
- **National Security and Intelligence Activities.** We may release PHI about you to authorized federal officials for intelligence, counterintelligence, and other national security activities authorized by law.
- **Protective Services for the President and Others.** We may disclose PHI about you to authorized federal or state officials, so they may provide protection to the President, other authorized persons, or foreign heads of state.
- **Privacy Rule Investigations.** We may disclose PHI to the Secretary of HHS as required to cooperate with a review of our compliance with the HIPAA Privacy Rule.
- **Inmates.** If you are an inmate of a correctional institution or under the custody of a law enforcement official, we may release PHI about you to the correctional institution or law enforcement official. This release would be necessary for the institution to provide you with health care; to protect your health and safety or the health and safety of others; or for the safety and security of the correctional institution.
- **Disaster Relief Purposes.** In the event of a disaster, PHI may be disclosed to a public or private entity, authorized by law or by its charter to assist in disaster relief efforts. This information may be used to assist in notifying a family member, personal representative, or another person responsible for the member's care of a member's location, condition, or death.

Disclosures to Personal Representatives and Family Members

- **Personal Representatives.** We will disclose your PHI to individuals who are your personal representatives under state law. For example, in most situations, we will disclose PHI of minor children to the parents of such children. We will also disclose your PHI to other persons authorized by you in writing to receive your PHI, such as your representative under a medical power of attorney, so long as we are provided with a written authorization and any supporting documentation (i.e. power of attorney).

Under the HIPAA privacy rule, we do not have to disclose information to a personal representative if we have a reasonable belief that:

- You have been, or may be, subjected to domestic violence, abuse or neglect by such person
 - Treating such person as your personal representative could endanger you, or
 - In the exercise of our professional judgment, it is not in your best interest to treat the person as your personal representative.
- **Family Members.** Unless otherwise allowed by HIPAA, we will not orally disclose your PHI to your spouse, domestic partner, or parent (if you are an adult child), unless you have agreed to such disclosure. With limited exceptions, however, we will send all mail to the named insured. This includes mail relating to the named insured's family members, including information on the use of benefits and denial of benefits to the named insured's family members. If you have requested restrictions on the use and disclosure of your PHI, and we have agreed to the request, we will send mail as provided by the request. See the "Your Right to Request Restrictions" bullet under the "Your Rights Regarding Your PHI" section for more details.

Upon your death, we may disclose your PHI to a family member, other relative, or close friend involved in your health care or payment of your health care, prior to your death. This is done to the extent that the PHI is relevant to such person's involvement and such disclosure is not inconsistent with your prior expressed preference known to us.

Rights Regarding Your PHI

You have the following rights regarding the PHI we maintain about you:

- **Right to Inspect and Copy.** You have the right to inspect and copy PHI about you that is maintained by CalPERS Health and Long-Term Care programs.

To inspect and copy your PHI, maintained by CalPERS Health or Long-Term Care programs, you must submit your request in writing to the HIPAA Unit at P. O. Box 942715, Sacramento, CA 94229-2715. If you request a copy of the information, we may charge a fee for the costs of copying, mailing, or other supplies associated with your request.

If the information you request is maintained electronically, and you request an electronic copy, we will provide a copy in the electronic format you request, if the information can be readily produced in that format. If the information cannot be readily produced in that electronic format, we will work with you to come to an agreement on another suitable format. If we cannot agree on an electronic format, we will provide you with a paper copy.

We may deny your request to inspect and copy your PHI in limited circumstances. If you are denied access to your PHI, you may request that the denial be reviewed. To request a review, you must submit your request in writing to the HIPAA Unit at P.O. Box 942715, Sacramento, CA 94229-2714. The person conducting the review will not be the person who denied your request. We will comply with the outcome of the review.

- **Right to Amend.** If you feel the PHI we have about you is incorrect or incomplete, you may ask us to amend the information. You have the right to request an amendment for as long as the information is kept by or for CalPERS health or long-term care programs.

To request an amendment, you must submit your request in writing to the HIPAA Unit at P. O. Box 942715, Sacramento, CA 94229-2715. In addition, you must provide a reason that supports your request.

We may deny your request for an amendment if it is not in writing or does not include a reason to support the request. In addition, we may deny your request if you ask us to amend information that:

- Was not created by us, unless the person or entity that created the information is no longer available to make the amendment
- Is not part of the PHI kept by or for CalPERS
- Is not part of the information which you would be permitted to inspect and copy, or
- Is accurate and complete.

If we deny your request for amendment, you have the right to submit a written addendum, not to exceed 250 words, with respect to the item in your record you believe is incomplete or incorrect. If your written addendum clearly indicates that you want the document to be made part of your health record, we will attach it to your records and include it with any disclosure of the item in question.

- **Right to an Accounting of Disclosures.** You have the right to request an “accounting of disclosures.” This is a list of certain disclosures we made regarding your PHI. The accounting will not include disclosures made for purposes of treatment, payment, or health care operations, disclosures made to you, disclosures made pursuant to a written authorization from you, disclosures made to friends or family in your presence or because of an emergency, disclosures made for national security purposes, and disclosures deemed incidental or otherwise permissible.

To request an accounting of disclosures, you must submit your request in writing to the HIPAA Unit at P.O. Box 942715, Sacramento, CA 94229-2715. Your request must state a time period, which may not be longer than six years prior to the date of the request. Your request should indicate in what form you want the accounting (paper or electronic). The first accounting of disclosures you request, within a 12-month period, will be free. For additional accountings within a 12-month period, we may charge you for the costs of providing it. We will notify you of the costs involved and you may choose to withdraw or modify your request at that time, before any costs are incurred.

- **Right to Request Restrictions.** You have the right to request a restriction or limitation on the PHI we use or disclose about you for treatment, payment, or health care operations. You also have the right to request a limit on the PHI we disclose about you to someone who is involved in your care or the payment for your care, like a family member or friend. For example, you could ask that we not use or disclose information about a surgery you had.

We are not required to agree to your request except in limited circumstances. We will agree to your request if the PHI pertains solely to a health care item or service for which the health care provider has been paid out of pocket in full. In other instances, we may not agree to your request.

If we do agree, we will comply with your request unless the information is needed to provide you with emergency treatment.

To request restrictions, you must submit your request in writing to the HIPAA Unit at P.O. Box 942715, Sacramento, CA 94229-2715. In your request, you must tell us what information you want to limit, whether you want to limit our use, disclosure, or both, and to whom you want the limits to apply.

- **Right to Request Alternative Communications.** You have the right to request that we communicate with you about your PHI by alternative means and/or to alternative locations, if you believe that our normal method or your location of communication could endanger you. For example, you can ask that we only contact you at work or by mail to a specific address.

To request alternative communications, you must submit your request in writing to the HIPAA Unit at P.O. Box 942715, Sacramento, CA 94229-2715. Your request must specify how or where you wish to be contacted. We will not ask you to provide the reason for your request, but your request must include a statement explaining how our normal method or your location of communication could endanger you. We will accommodate all reasonable requests for alternative communications that include this required statement.

- **Breach Notification.** If and when required by HIPAA, we will notify you of a breach of the HIPAA privacy rules involving your PHI. If HIPAA requires us to send you a notice, the notice will contain:
 - A description of the breach
 - The type of PHI that was breached
 - What steps you could take to protect yourself from potential harm
 - What steps we are taking to investigate the breach, mitigate harm and protect from further breaches, and
 - Who to contact for additional information.
- **Right to a Paper Copy of This Notice.** You have the right to a paper copy of this notice. You may ask us to give you a copy of this notice at any time. Even if you have agreed to receive this notice electronically, you are still entitled to a paper copy of this notice.

To obtain a paper copy, contact the HIPAA Unit at P. O. Box 942715, Sacramento, CA 94229-2715 or visit our website at www.calpers.ca.gov to print out a copy. Search “Notice of Privacy Practices” to easily access the notice on our website.

Changes to this Notice

We reserve the right to change this notice at any time. We reserve the right to make the revised or changed notice effective for PHI we already maintain about you, as well as any information we receive in the future. We will post a copy of the current notice on the CalPERS website at www.calpers.ca.gov. The notice will contain the effective date at the top of the first page. In addition, a copy of the current notice will be included in the annual CalPERS open enrollment mailing.

Complaints

If you believe your privacy rights have been violated, you may file a complaint with CalPERS or with the Secretary of HHS. To file a complaint with CalPERS, contact the HIPAA Unit at P.O. Box 942715, Sacramento, CA 94229-2715. All complaints must be submitted in writing.

You will not be retaliated against for filing a complaint.

Other Uses of PHI

Other uses and disclosures of PHI not covered by this notice will be made only with your written permission or authorization. If you provide us permission to use or disclose PHI about you, you may revoke that permission at any time. You may submit your request in writing to the HIPAA Unit at P.O. Box 942715, Sacramento, CA 94229-2715. If you revoke your permission, we will no longer use or disclose PHI about you for the reasons covered by your written authorization. However, please understand that we are unable to take back any disclosures we have already made with your permission, and that we are required to retain our records of your participation in CalPERS Health and Long-Term Care programs.

Note: CalPERS does not discriminate on the basis of age, ancestry, citizenship, color, denial of Family Medical Care Leave, disability, domestic violence victim status, gender, gender identity/expression, genetic information, marital status, medical condition, military/veteran status, national origin, political affiliation, race, religion, religious creed, requests for leave under the California Family Rights Act, sex (including pregnancy, childbirth, and breastfeeding or medical conditions relating to pregnancy, childbirth, and breastfeeding), sexual orientation, or any other classification protected by federal, state or local laws or ordinances.