



Human Resources and  
Allied Professionals Program



# Privacy Issues Sharing Personal Information in the Workplace

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## Human Resources and Allied Professionals Program



# Three Sets of Laws

- Health Insurance Portability and Accountability Act - HIPAA
- California Confidentiality of Medical Information Act - CMIA
- California Constitution, Article I, Section 1
- Note: other laws, privileges, University policies apply



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# HIPAA

In effect April 2003

Federal Law/Regulations

HIPAA Privacy & Security Standards  
mandate protection and safeguards for  
Access, Use and Disclosure of  
Protected Health Information - PHI.

There are Sanctions for Violations.



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“protected health information” “PHI”

-Health Information created, stored or maintained by a health care provider, health plan, health care clearinghouse, And

-Relates to the past, present or future physical or mental health or condition of the individual, the provision of health care to the individual or the payment for the provision of health care,

And

-Identifies the individual



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# HIPAA - Personal Identifiers

- Name, all types of addresses including email, URL, home
- Identifying numbers, including Social Security, medical record, insurance, account
- Full facial photographs
- Dates, including birth dates, dates of admission and discharge, or death



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# HIPAA - “Covered Entities”

- UC Health Care Providers, including hospitals, health care professionals
- UC Health Plans
  - For most, UC is not the covered entity
  - For some - UC’s self funded plans (Blue Cross Core & High Option) - UC is the covered entity
  - HIPAA also imposes requirements on UC as a “Plan Sponsor” of health plans



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# Some employees have both HIPAA-covered responsibilities and non-covered responsibilities

## Examples:

- Physicians are “providers” under HIPAA but also engage in non-HIPAA covered functions
- Some UC employees handle PHI in connection with a health plan issue and also engage in non-HIPAA covered activities
- Lawyers may be part of the covered entity for some responsibilities, but not for all



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### For those with dual roles

- Employees must maintain separation between covered and non-covered activities
- Employees must not disclose PHI to non-covered parts of UC or non-covered entities without Authorization or unless required or permitted by law
- The Minimum Necessary standard applies to uses and disclosures of PHI



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### Minimum Necessary Standard

- Covered providers/health plans must use or disclose only the minimum PHI that is reasonable and necessary to do their job.
- They must limit the access, disclosure or use of PHI by others to the minimum amount that is reasonable and necessary to accomplish the intended purpose.



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# Some Exceptions to Minimum Necessary Standard

- Disclosures to Providers for Treatment
- Disclosures to the Individual/Patient
- Uses & Disclosures required by Law
- Disclosures to DHHS/OCR - enforcement
- Uses & Disclosures with Authorization



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1. Description of PHI and purpose of use or disclosure
2. Name of person or class of persons authorized to make the requested use of disclosure
3. Name of person or class of persons authorized to use or receive the PHI
4. Description of each purpose of the requested use or disclosure



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# HIPAA Authorization requires

5. An expiration date or event
6. Signature and date
7. Statement of the Patient's right to revoke  
description of how to revoke the Authorization
8. Statement whether treatment, payment,  
enrollment or eligibility for benefits may be  
conditioned on signing Authorization



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# HIPAA Authorization requires

9. Statement that the information disclosed pursuant to the authorization may be subject to redisclosure by the recipient and no longer covered by HIPAA
10. Plain Language



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# CMIA

# Confidentiality of Medical Information Act

California Civil Code Sections 56 - 56.35

Enacted in 1981. Many Amendments  
over the years since 1981. Most have  
the effect of increasing the  
confidentiality of medical information



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# “Medical Information”

Any individually identifiable information in possession of or derived from a health care provider, a health plan, or pharmaceutical company regarding a patient’s medical history, mental or physical condition or treatment.



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# When Medical Information May be used or disclosed

- \*Authorization from the patient/employee.
- \*Required by law, court order, subpoena, etc.
- \*If permitted by section 56.10(c) or other law.

But remember HIPAA & Calif. Constitution



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# Authorization for Plan or Provider to disclose medical information

\*Section 56.11

\*Requirements similar to those for Authorization  
for Employers to disclose medical information



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# Limitation on Recipient

- A recipient of medical information pursuant to an authorization or pursuant to Section 56.10(c) may not further disclose that medical information except
  - With a new authorization, or
  - As specifically required or permitted by other CMIA provisions applicable to disclosures by plans and providers or by law.



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# Communication to Recipient (Section 56.14)

- A Provider or Plan that discloses medical information pursuant to a CMIA authorization must communicate to the recipient any limitations in the authorization regarding the use of the medical information.



# Use and Disclosure of Medical Information by Employers

- Section 56.20(a)
- Employers must establish appropriate procedures to ensure the confidentiality and protection from unauthorized use and disclosure of medical information.
- Procedures may include training and security systems restricting access to files containing medical information



# Use and Disclosure of Medical Information by Employers

- Section 56.20(b)
- No employee shall be discriminated against in terms or conditions of employment due to that employee's refusal to sign an authorization
- Nothing in this section prohibits an employer from taking such action as is necessary in the absence of medical information due to an employee's refusal to sign an authorization.



# Use and Disclosure of Medical Information by Employers

- Section 56.20(c) - Authorization
- Employer may not use or disclose medical information without the employee having first signed an authorization under Section 56.11 or Section 56.21 permitting such use or disclosure.
- There are exceptions.



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# Some Exceptions to Requirement of Employee Authorization

- If the Disclosure is Required by Law
- That part of the information which is Relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and employee are Parties AND in which the employee has placed in issue his/her medical history, mental or physical condition, or treatment may be used or disclosed in connection with that Proceeding.
  - Proceeding before neutral decision maker.



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# Some Exceptions to Requirement of Employee Authorization, cont'd

- Information may be used only for the purpose of administering and maintaining employee benefit plans, including health care plans, workers' compensation and for determining eligibility for paid and unpaid leave from work for medical reasons.



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### Employee Authorization (Section 56.21) An Authorization for an Employer to Disclose Medical Information Shall be Valid if:

1. Handwritten, or at least 14-point type
2. Clearly separate from any other text on the same page.
3. Employee signature serves no purpose other than to execute the authorization
4. Is signed and dated by employee, or the legal representative of the employee if the employee is a minor or incompetent.



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### Employee Authorization must:

5. State the limitations, if any, on the types of medical information to be disclosed.
6. State the names or functions of the employer or person authorized to disclose the medical information.
7. State the names or functions of the persons or entities authorized to receive the medical information.



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# Employee Authorization must:

8. State the limitations, if any, on the use of the medical information by the persons or entities authorized to receive it.
9. State a specific date after which the employer is no longer authorized to disclose the medical information.
10. Advise the person who signed the authorization of the right to receive a copy of the authorization.



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# Employee Authorization - Employer obligated to advise on limitations on use

- An employer who discloses medical information pursuant to an authorization required by this chapter must communicate to the person or entity to which it discloses the medical information any limitations in the authorization regarding the use of the medical information. (Section 56.23)



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### Further Disclosure by Recipient (Section 56.245)

- A recipient of medical information pursuant to an employee authorization may not further disclose such medical information unless in accordance with a new authorization, or
- As specifically required or permitted by other provisions of this chapter or by law.



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# Penalties

- Patient may recover compensatory & punitive damages not to exceed \$3,000, attorneys' fees not to exceed \$1,000 and the costs of litigation
- Violations that result in economic loss or personal injury are punishable as misdemeanors.
- Private right of action
  - \$1,000 - no actual damages need be proved
  - Actual damages



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### Penalties, cont'd

- Person (non health care professional) who knowingly and willfully obtains, discloses or uses medical information - up to \$25,000 per violation.
- Person (non health care professional) who knowingly and willfully obtains or uses medical information for financial gain - up to \$250,000 + per violation.
- Person who is not permitted to receive medical information and who knowingly and willfully obtains, discloses or uses medical information without written authorization - up to \$250,000.



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**NOTE: Some medical information not subject to CMIA - BUT still subject to California Constitution's Right of Privacy**

- List includes
  - OSHA Investigations of on-the-job accidents or illnesses
  - Mental Health Information subject to LPS Act
  - Information acquired, maintained, or disclosed pursuant to
    - Certain activities of the Dept of Industrial Relations, including OSHA
    - Workers' compensation proceedings
    - Department of Rehabilitation activities involving injured employees



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### California Constitution Article I, section 1 Right of Privacy

“All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and **pursuing and obtaining** safety, happiness, and **privacy**.”



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California Supreme Court (Hill v. NCAA (1994)) defined the elements of a claim under the privacy clause:

- A legally protected privacy interest
- A reasonable expectation of privacy in the circumstances
- Conduct by defendant constituting a serious invasion of privacy



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# Balancing Test

- “Diverse and somewhat amorphous character of the privacy right necessarily requires that privacy interests be specifically identified and carefully compared with competing or countervailing privacy and nonprivacy interests in a ‘balancing test.’”



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### Pettus v. Cole (1996)

“There is no reason in law or policy why an employer should be allowed access to detailed family or medical histories of its employees, intricacies of its employees’ mental processes, except with an individual employee’s freely given consent to the particular disclosure or some other substantial justification.”

Employer must show “compelling interest.”



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# Wall of Privacy

- “it is only fair that employees be allowed to maintain a wall of privacy around highly personal information.” (p.445)



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# Employer's Need for Information

- If employee seeks a disability leave, for example, an employer representative who makes decisions about disability leave is entitled to such information as is necessary to make an evenhanded decision about the employee's eligibility for such leave.
- The information needed to accomplish the employer's legitimate objectives.



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# Ending Notes

- Use or disclosure of medical information will depend on the facts and circumstances of each case.
- A case by case analysis will generally be required for those uses and disclosures not part of an approved policy/practice.
- Consider: Voluntary Employee Authorization stating the names/functions of the recipient of the medical information and the limitations on its use.