

**County of San Bernardino
Department of Behavioral Health**

**RELEASE OF INFORMATION: PATIENT'S RIGHT OF ACCESS
TO HIS/HER OWN MEDICAL RECORD**

California Health and Safety Code §123100 and HIPAA federal regulations 45C.F.R. §164.524 guarantees patients access to their own medical record information, with certain limitations. Federal regulations and patient access concerning drug and alcohol abuse records are covered by 42C.F.R. & 2.1 *et seq.* Access can be *denied* under specific circumstances specified in the law and under the HIPAA regulations. Under some circumstances the denial of access can be reviewed.

WHAT RECORDS ARE AVAILABLE FOR PATIENT ACCESS?

Access must be provided to the designated record set in the possession of a licensed health care provider listed in the law. This includes all licensed hospitals, skilled nursing homes, clinics, licensed physicians, dentists, podiatrists, chiropractors, clinical social workers, and marriage, family and child counselors.

ARE THERE LIMITATIONS?

The law describes certain types of information which are not considered to be a part of the medical record, e.g., any aggregate information about several patients, information regarding any other patient, certain information which may have been provided in confidence by someone other than the patient, or any other material that would not normally be considered a part of the medical record. Federal regulations place some additional limitations on access to substance abuse records.

WHO CAN HAVE ACCESS TO MY MEDICAL RECORD?

The following persons/agencies have the right to medical records:

- Parent or guardian of a minor who is a consumer (except when the minor has the right to consent to treatment)
- Guardian or conservator of an adult consumer
- A person authorized under a health care directive
- Consumer's legal representative
- Law Enforcement Officials (under circumstances specified in the Notice of Privacy Practices)
- National Security Agency (when authorized by law)
- Disaster relief entities, such as the Federal Emergency Management Agency (FEMA), American Red Cross, etc.
- Court – as the result of a subpoena or court order
- A deceased consumer's executor or administrator of estate, or beneficiary

Note: Proof of legitimacy and legal authority must be presented in all circumstances.

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RECORDS OF DECEASED PATIENTS WHO DIED WITHIN SAN BERNARDINO COUNTY

The definition of “personal representative” in the law includes the beneficiary or personal representative of a deceased patient. Therefore, a deceased patient’s beneficiary or personal representative will have the same right of access as the patient would have had if he or she were still living. The beneficiary is anyone who will inherit from the patient by will or estate. The personal representative is either the administrator of the patient’s estate or the executor under the patient’s will. The law does not give any other person the right to obtain access to a deceased patient’s records. Legal documentation must be provided to prove one is the “personal representative” of a deceased patient.

You may obtain a death certificate if death occurred in the current year or one year prior at:

Department of Public Health
351 North Mt. View Ave
San Bernardino, CA 92415
(909) 381-8990

You may obtain a death certificate if death occurred two years ago and prior at:

Auditor/Controller-Recorder Hall of Records
222 West Hospitality Lane
San Bernardino, CA 92415
(909) 387-8314

CAN I BE DENIED ACCESS TO MY RECORDS?

Yes. The law provides that the health care provider can deny access to the minor’s records requested by the parent or guardian if it is believed that disclosure will have a detrimental effect on the provider’s treatment relationship with the minor patient. Access can also be denied if the provider believes that disclosure to the parent or guardian may have an adverse effect on the minor patient’s safety or psychological well being. Denial of access is mandatory when the parent or guardian seeks access to the record of a minor patient if the minor has the right to consent to treatment. The provider will usually notify the parent or guardian if access is being denied.

Access can also be denied to the psychiatric patient if the provider believes that such disclosure may have a significant adverse consequence for the patient. In the event of this type of denial, the patient may request a review of the denial by a physician, licensed social worker, or licensed clinical psychologist appointed by the provider that did not participate in the original decision to deny.

Substance abuse records governed by federal regulation are not subject to California *patient access law*. Federal regulations governing disclosure of information from alcohol and drug abuse records [42 C.F.R. & 2.1 *et seq.*] do not give the patient an automatic right to inspect or obtain copies of medical records if the provider determines that such disclosure will harm the patient or the program’s overall provision of services to the community.

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WHAT TYPE OF ACCESS MAY I REQUEST?

You may ask to inspect the original records or to receive copies of all or part of the record. If you request inspection and find at the time of inspection that you would also like copies, they may be requested at that time, but this constitutes a new request.

You may also request a summary of the information requested in lieu of either inspection or copies.

WHAT IS MEANT BY “INSPECTION” AND “SUMMARY”?

Inspection means that you go to the hospital or office to review the actual original medical record. A summary is a narrative account of the requested information, but not a copy of the actual record.

We will arrange with you a convenient time and place to inspect or obtain copies of the protected health information you are requesting, or we will mail copies of the PHI at your request.

HOW DO I REQUEST ACCESS?

Requests for access must be in writing. *

Your written request should have the following:

- Full name of patient, including maiden, and any other names that may have been used
- Birthday (and social security number if available) and
- Type of access requested

In requesting copies, you should indicate the following:

- What parts of the medical record you want
(You should request only those parts that have to do with the need for the access.)

* Please complete the “**Access to Medical Records Authorization and Request**” form as your written request for access. You must complete this form in full or it will be returned to you to do so.

WHAT WILL IT COST ME?

The law recognizes that health care providers will incur some expense in providing access and permits recovery of these costs, including a charge for copying. If copies are requested, there will be an additional charge. Since most records are lengthy, you may want to consider just what your actual needs are and limit your request for copies to those specific items, rather than requesting the entire record. The law also permits the provider to charge for the expense involved in preparing the summary alternative. You may ask for a price list from the Medical Records Office, phone number: (909) 421-9350.

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Note: DBH must furnish free copies of the “relevant portion” of their record, *if* the client is requesting them to support an appeal regarding eligibility for a public beneficiary program (including: Medi-Cal, social security disability insurance benefits, and Supplemental Security Income/State Supplementary Program for Aged, Blind Disabled (SSI/SSP) benefits) *and* the client is *not* being legally represented by a private attorney. Any other representative of the client (not including a private attorney) is limited to one free copy.

DO I HAVE TO PAY IN ADVANCE?

YES. The law makes access conditional upon the prepayment of allowable charges, and you will be expected to pay before inspection or copying. If you have requested copies, the provider will send you a statement of expected charges before making the copies so that you will have the opportunity to change your request if the charge is greater than anticipated.

IF MY REQUEST IS APPROVED, HOW SOON WILL I HAVE ACCESS?

California law specifies that inspection must be permitted within **five (5) working days** and copies must be available within **fifteen (15) working days** after a **VALID WRITTEN REQUEST IS RECEIVED**. If you request the summary alternative, it must be available within **ten (10) working days**. Response time may be extended **thirty (30) days** from the time of the request, however if an extension is needed, you will be notified.

IMPORTANT: A request is not considered valid until the information furnished is adequate to identify the record properly and payment is made for the requested copies.

ARE THERE OTHER WAYS I CAN OBTAIN INFORMATION FROM MY RECORD?

Yes. Health care facilities ordinarily furnish information necessary to continue your care when it is requested by another physician or hospital. If your insurance company, school, employer or other third party needs information from your record, it is usually better to let them request it directly, as they can be more precise about what they need. Any charges for information furnished in this way are usually paid by the third party that has requested the information. Such requests will require a valid written authorization from you to release the information. This authorization may be obtained from the Medical Record Office or the clinic that you attend.