

# PROTECTING PATIENT PRIVACY: THE OREGON CONFIDENTIAL COMMUNICATION REQUEST WHAT PROVIDERS NEED TO KNOW

## BACKGROUND

Patient confidentiality is an essential aspect of the patient-provider relationship. When confidentiality is not assured, patients may be reluctant to communicate openly with their health care provider and may delay or even forgo accessing needed care. Sensitive information about the care received by dependents can be inadvertently divulged to the health insurance policy holders (such as parents/guardians or spouses) through billing-related communications. Disclosure of sensitive health information can negatively impact all consumers of health care services, but are most problematic and common for:

- adults of any age whose partner holds the insurance policy,
- minors who may consent to specific health care services and are insured through a parent, and
- young adults (age 18-26) remaining on their parent's health insurance.

Protecting patient privacy and confidentiality does not preclude partner or family involvement in care. Encouraging and helping to facilitate partner and family involvement is an important piece of patient-centered care. Best practices call for providers to balance the need for privacy and confidentiality with appropriate partner and/or family involvement.

**This document describes a new law in Oregon and what it does and does not do in regards to protecting patient privacy.** It shares information necessary for providers to have a conversation with patients about their confidentiality needs.



## WHAT DOES THE NEW LAW DO?

HB 2758 was passed during the 2015 Oregon legislative session. **It allows patients enrolled in a private health insurance policy<sup>1</sup> the right to request that protected health information be sent directly to them instead of the person who pays for their health insurance** (i.e. the primary account holder or policy holder). Protected health information is individually identifiable health information the insurance company has or sends out in any form.

Types of communication covered under a confidential communication request includes:



- An explanation of benefits (EOB);
- Name and address of provider, description of services provided, or other visit information;
- A claim denial;
- A request for additional information about a claim;
- A notice of a contested claim;
- Any written, oral, or electronic communication described on this list that contains protected health information.

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<sup>1</sup> This law does not apply to Oregonians with coverage through the Oregon Health Plan (OHP).

## HOW DOES A CLIENT REQUEST CONFIDENTIAL COMMUNICATION?

Patients must complete, sign and send the Oregon Request for Confidential Communication form<sup>2</sup> to their health insurance company. The form can be sent by mail, fax or email. The form is available at: <http://tinyurl.com/ORPatientPrivacy>.

- Requests sent by mail may take up to **30 days** to process.
- Requests sent electronically (fax or email) may take up to **7 days** to process.



It is important that patients confirm with their insurance company that their request has been received and processed. **If a patient requests confidential communications and the request has not been fully processed, information about their visit may be sent to the policy holder.** In other words, information about a current or subsequent visit may not be kept confidential, even if they submit a confidential communications request on the day of the visit.

Some health insurance companies may accept a confidential communications request made by phone. Patients should call their health insurance company to find out whether it accepts confidential communication requests by phone or whether they require the request be submitted by mail, fax, or email.

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<sup>2</sup> Some health insurance plans may accept requests for confidential communications via other forms or mechanisms. However, all health insurance plans must accept the Oregon Request for Confidential Communication form.

## WHAT ARE THE LIMITS OF THIS NEW LAW?

While the new law is a positive step toward privacy protection, **it does not address all of the ways in which private information can be inadvertently shared with a policy holder.**



- Submitting a confidential communication request does not suppress or stop an EOB or other billing communication from being generated. Instead, it redirects the communication to an alternate mailing address or online patient portal. For this reason, it is important that patients provide health insurance companies with good and clear information on where to send billing communications.
- Most health insurance plans have out-of-pocket maximums and deductible caps. Submitting a confidential communications request will not prevent these maximums and caps from being reached. Therefore, it is possible that the policy holder may receive general information (such as what the health insurance plan paid or what it was charged) even with a confidential communications request in place.
- Most health insurance plans in Oregon are covered by this law. However, it does not apply to Medicaid/Oregon Health Plan (OHP) and may not apply to some health insurance plans based outside of Oregon. The best way to find out if the patient's health insurance company will comply with the law is to contact the health insurance company's customer service department.
- This law does not impact communications generated by providers (such as appointment reminders, after visit summaries) or information that may be disclosed within the electronic health system (such as current prescriptions or health history). This law does not change or impact what information can be seen by a policy holder with access to a client's patient portal. Some patient portals allow "proxy access" for members 13 and over, limiting what information a policy holder may be able to see about the patient. However, this varies by electronic health record system, health insurance plan, and clinic/health center.

## HOW CAN MY CLINIC/PRACTICE SUPPORT OUR PATIENTS IN REQUESTING CONFIDENTIAL COMMUNICATION?

- Ensure that all clinic staff, including front office staff, providers, and billers, are aware of the new law and understand that any privately insured patient has the right to request confidential communications from their insurance company.
- Incorporate discussions about confidentiality and the new law throughout the patient's health care visit (e.g. check-in, during the provider visit, and check-out).
- Adopt or align clinic processes to assist patients in requesting confidential communication.
- Have hard-copy versions of the standardized form available at the front desk, in exam rooms, and at check-out.
- Help patients complete each section of the form.
- Identify where patients need to send the form based on their health insurance company's requirements and assist them in doing so.
- Prominently display information about this law in clinic waiting rooms, exam rooms, and other areas clearly visible to patients.



## WHAT ELSE CAN MY CLINIC/PRACTICE DO TO HELP PROTECT PATIENT PRIVACY?

- Continue implementing any clinic policy and/or practice standard related to confidentiality. Have clear clinic policies on confidentiality, its limits, and the ways in which to communicate those policies to patients.
- Map a patient’s entire experience of care (from appointment setting to billing) to identify privacy “gaps” where sensitive information could be inadvertently disclosed.
- Routinely ask all patients how they would like to be contacted regarding their care.
- If you serve patients insured by Oregon Health Plan, to the extent possible, know whether contracted coordinated care organizations (CCOs) send communications (i.e. EOBs) to policy holders.



## WHERE CAN I FIND ADDITIONAL RESOURCES ABOUT CONFIDENTIALITY IN THE HEALTH CARE SETTING?

[Oregon Administrative Rules for House Bill 2758](#)

[Oregon Minor Rights: Access and Consent to Health Care. A Resource for Providers, Parents, and Educators.](#)

[American Academy of Pediatrics Policy, April 2014. Recommendations for electronic health record use for delivery of adolescent health care. Journal of Adolescent Health, 54, 487-490.](#)