

**COUNTY OF LOS ANGELES –DEPARTMENT OF PUBLIC HEALTH  
SUBSTANCE ABUSE PREVENTION AND CONTROL**

**SB 138 (Hernandez) – The Confidential Health Information Act**

**Overview:**

On January 1, a new state law SB 138 went into effect that allows a subscriber or enrollee of a health care service plan to make a “Confidential communications request” to keep certain medical information private. While many health privacy laws already exist, SB138 seeks to close loopholes and clarify definitions in existing law and regulations to protect the sensitive health information of individuals covered under another persons’ health insurance policy.

**Issues:**

1. How does 42 CFR Part 2 and SB 138 provisions overlap, if any?
2. Do we need further safeguards for compliance with SB 138?

**Analysis:**

42 CFR Part 2 prohibits federally assisted SUD providers from disclosing alcohol and drug patient records that relate to the identity, diagnosis, prognosis, or treatment of any patient in a substance abuse program, except under limited circumstances.

SB138, the Confidential Health Information Act, authored by Senator Ed Hernandez [D-24] of Los Angeles, similarly restricts the transmission of sensitive medical information, but more specifically by health care service plans or insurers. SB 138 requires health plans to honor Confidential Communication Requests when individuals covered under another person’s policy seek “Sensitive Services,” like drug treatment, birth control, STD tests, mental health tests, or other services that they feel could “endanger” them, or cause harassment or abuse.

The individual can request in writing or e-transmission that health information be provided by alternate mean (e.g. by phone) or to alternate locations (e.g. a friend’s address). Although such requests are already allowed under the federal Health Insurance Portability and Accountability Act of 1996 (1996), through SB 138, the Legislature explicitly declared the intent to incorporate HIPAA standards into state law.

The insurer must implement the Confidential Communication Request within 7 days if made by telephone or electronic transmission, or 14 days if by mail. Such request will be valid until revoked or a new request is filed. Thus, such individuals covered under a parent or a spouse’s plan will be able to prevent their insurer from disclosing their confidential health information to the main policyholder through Explanation of Benefits letters or other regular communications.

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**Conclusion:**

SB 138 will most likely affect young adults who are covered by a parent's health plan and individuals who are in troubled relationships. While it explicitly applies to health service plans, all health providers, especially those that provide drug treatment services or other "sensitive services", should be aware of the increased protections for individuals covered under another person's insurance policy and the Legislature's declared intent to adapt HIPAA standards into law. It is advisable that all providers review their current privacy policies to confirm that sensitive information regarding young adults or other individuals are not inadvertently released to their family or partners via marketing, promotional, or other informative communications.