



## Frequently Asked Questions for Providers: New Patient Privacy Protections

If your patient is on another person's health insurance plan (such as their parent, spouse or partner), they can now submit a request to that health insurance plan to keep information about any health care services they use confidential.

### General Information

#### **What problem does this fix?**

If a patient is covered by another person's health insurance plan, such as their parent, spouse, or partner they are called a "dependent." The person who obtained the health insurance plan is considered the "policyholder" or "subscriber." If a patient is a dependent, anytime they receive health care services, their health insurance plan may send some of their confidential health information – such as the name of their provider and the date and type of the services they received – to the policyholder. The form sent is called the Summary of Payments (SOP) or Explanation of Benefits (EOB).

#### **What is a Summary of Payments (SOP) form or Explanation of Benefits (EOB) form?**

Health insurance plans send a Summary of Payments (SOP) form, also called an Explanation of Benefits (EOB) form, when a person with health insurance receives medical care. Under federal law, health insurance plans are required to send an SOP form when there is any denial of coverage for a health care service or when there is cost-sharing (co-pay, deductible or coinsurance) for the service. Health insurance plans may also send the form for other services. The SOP form details the type and cost of medical services that have been provided.

The SOP form may contain information on sensitive health care services, such as care related to sexual and reproductive health, domestic violence, sexual assault, mental health, substance use disorders, HIV testing and treatment, or gender identity. If your patient is a dependent on the plan, such as a young adult or spouse, and receives health care services, sending this form to the policyholder can unintentionally compromise their confidentiality.



## **Why does my patient's health insurance plan send information to the policyholder in the first place?**

Consumer protection law sometimes requires health insurance plans to send the policyholder information about how and when their health insurance plan is being used. Unfortunately, this can lead to the private health information of dependents on the plan being shared with the policyholder. Now, Massachusetts law requires insurance companies to stop sharing this information with the policyholder when the patient who received medical care requests that the information stays confidential.

## **How does this law protect my patient's health care confidentiality?**

The law protects patient privacy in four main ways:

1. Health insurance plans must address the SOP form to the patient's name rather than to the policyholder.
2. All patients can choose their preferred method of receiving SOP forms, including at a different mailing address or through an online portal. (All health insurance plans are required to offer SOP forms online by April 2019, but some may be doing this already.)
3. SOP forms will contain general information only, such as "office visit" or "medical care," rather than explicit descriptions of sensitive health care services that could violate confidentiality.
4. All patients will have the option to opt-out of receiving an SOP form when there is no cost-sharing (meaning co-pay, deductible or coinsurance) for the health care visit or service.

## **When do these protections go into effect?**

All of these protections go into effect on July 1, 2018. But health insurance plans have until April 1, 2019 to offer the SOP form to patients online instead of sending a copy in the mail. Some health insurance plans may offer the online option earlier if they are able.

## **Who can use these new privacy protections?**

If your patient is age 18 and older and is covered by another's health insurance plan – such as their parent, spouse or partner – they can request to keep their health information confidential and the health insurance plan must comply with that request. If your patient is under 18, they can request to keep the information confidential only in certain circumstances, as described in the next question. A legal guardian who is legally allowed to consent to health care for the patient may also request these protections on behalf of the patient (see questions below).

## If my patient is under 18, do these protections apply to them?

If your patient is under 18, they can use these new protections only in the following circumstances below, based on existing Massachusetts minor consent laws.

1. If your patient under 18 and falls into any of the categories below, they can consent to their own health care. They can then request that the SOP be sent to a different mailing address or that they only receive it online (where available).
  - They are married, divorced or widowed
  - They are a parent\*\*
  - They are living on their own and managing their own finances\*\*
  - They are a member of the armed forces\*\*
  - They are pregnant or believe they may be pregnant\*\*
  - When the doctor determines that a patient is a 'mature minor', which means the doctor believes the minor can give informed consent to the treatment and it is in the minor's best interest not to notify his or her parents.\*\*

\*\*For these categories, minors under age 18 still cannot access abortion services unless permitted by a court order as described below and cannot access sterilization services.

After the patient makes the initial request, a new request for sending the SOP to a different mailing address or viewing it online does not have to be completed at each health care visit. Once the request is in place, the patient's health plan must continue to follow it until they request to change their preferred address. The best time to make this request is as soon as their health insurance starts and before they receive any medical services. However, they can still make this request after they receive health care services, ideally within one week from the date of service.

2. If your patient is under 18, they can access any of the services below on their own consent. They can then request that the SOP be sent to a different mailing address or to only receive it online (where available).
  - For emergency services if delay would risk their health or life
  - For diagnosis or treatment relating to STI treatment and testing and HIV testing
  - For confidential family planning services – patients should ask their health care provider if the visit applies to them
  - For substance abuse treatment when the patient is 12 or older and at least two doctors have found them to be drug dependent (except for methadone maintenance therapy)
  - For admission at a mental health treatment facility if they are 16 or older
  - For abortion services if they obtain permission through a court order known as "judicial bypass," Mary Moe petition or 12S petition

The patient needs to make the request to send the SOP to a different mailing address or to view it online each time they receive this specific health care service.



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They must make the request as soon as possible after the service, ideally within one week from the date of service.

3. The patient can request that the SOP not be sent at all if they do not have any out-of-pocket costs (co-pay, deductible or coinsurance) for the health care visit, AND

- They fall into any of the categories listed in (1) above, OR
- They have received any of the services listed in (2) above.

The patient should make this request as soon as possible each time after they receive the health care service, ideally within one week from the date of service.

### **Can a parent who is not the policyholder request these new privacy protections for a child under age 18?**

There are only two situations when a non-policyholder parent can request that the SOP be sent to another address or not sent at all on behalf of their child under age 18.

1. The parent has exclusive legal authorization to consent to care for that under 18 year old child (usually this means sole custody) OR
2. If that parent states in writing that sharing the information to the policyholder parent could put either the non-policyholder parent or the minor child in danger.

### **Do these protections apply to all kinds of health insurance?**

These protections apply only to “fully-insured” health insurance plans and not “self-insured” health insurance plans. The best way for your patient to find out if their plan is fully-insured or self-insured is for them to call the member services number on the back of their health insurance card and talk with a customer service agent. If the person whose insurance they are covered under works for a large company, the health insurance plan is probably a “self-insured” plan. This means that the health insurance plan coordinates the medical benefits, but the employer collects the monthly premiums from employees and is responsible for paying for their medical services. Even if your patient’s health insurance plan is self-insured, it can still accept their request for confidentiality under a national privacy protection law called “HIPAA.” Under HIPAA, they can request that the SOP form be sent to a different mailing address if sharing that form with the policyholder could put them in danger.

### **[Sending the SOP form to a different mailing address or viewing the SOP online](#)**



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## **How can my patient request for an SOP form to be sent to a different mailing address or viewed online?**

Your patient can follow these instructions:

1. Find your health insurance plan name and policy number. Both can be found on your health insurance card.
2. Call the customer service phone number on the back of your health insurance card or on your health plan's website.
3. Say that you want to request the SOP form to be sent directly to your address and not to the policyholder, or that you would like to only receive it online instead of receiving a copy in the mail.
4. Your health insurance plan may want you to make the request in writing and will give you instructions for how to do that.

## **When can my patient make the request that an SOP form be sent to a different mailing address or viewed online?**

The best time to make this request is as soon as their health insurance starts and before they receive any medical services. However, they can still make this request after they receive health care services, ideally within one week from the date of service. Your patient's health insurance plan must comply with their request within 3 business days of receiving the request. They can call their health insurance plan to find out the status of their request.

## **Does my patient have to make this request every time they see a health care provider?**

No. A new request does not have to be completed at each health care visit (unless they are under 18). Once the request is in place, your patient's health insurance plan must continue to follow it until they request in writing to change their preferred address or stop future forms from being sent to a different address than the policyholder.

If your patient is under 18, please refer to the question "If my patient is under 18, do these protections apply to them?" in order to see whether they need to make the request every time they see a health care provider.

## **Can my patient request that an SOP form not be sent at all?**

If your patient does not owe a co-pay or, deductible, or coinsurance for a medical visit or service, they can request that an SOP form not be sent at all. For example, they can request that an SOP form not be sent for preventive health services which have no co-pay, deductible or coinsurance. Preventive services include, but are not limited to, health care visits where your patient gets counseling and testing for sexually transmitted infections (STIs), counseling and testing for HIV, birth control and other types of family



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planning services, pregnancy testing, or screening and counseling for domestic violence.

### **How can my patient make this request?**

Your patient should follow these instructions:

1. Find your health insurance plan name and policy number. Both can be found on your health insurance card.
2. Call the customer service phone number on the back of your health insurance card or on your health insurance plan's website.
3. Specify which health care service you are referring to, including the date of the service and the name of your health care provider, and say that you do not want the SOP form for that service to be sent.
4. Your health plan may want you to make the request in writing and will give you instructions for how to do that.

**Note: *Their health insurance plan cannot ask why they do not want the SOP form to be sent.***

### **Does my patient need to request that the SOP not be sent every time they see a health care provider?**

Yes. They are only allowed to make this request when there is no patient payment for a health care visit or service. Your patient should make the request as soon as possible after they receive health care services, ideally within one week from the date of service. Your patient's health insurance plan must comply with their request within 3 business days of receiving it. They can call your health insurance plan to find out the status of their request.

### **Masking sensitive health services**

#### **What does masking sensitive services mean?**

Health insurance plans are no longer allowed to identify or describe sensitive health care services in an SOP. Instead the SOPs must only contain general information, such as "office visit" or "medical care" along with the date the service happened. In order for the sensitive service to be masked, health care providers need to code the visit correctly as a sensitive service. When the correct diagnostic code is used, "masking" of the service will happen automatically and does not need to be requested on behalf of the patient.



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## **Which sensitive services will be automatically masked on the SOP?**

The Massachusetts Division of Insurance has defined the following [list of sensitive services](#), which cannot be identified or described on the SOP:

1. Mental Health Services
2. Substance Use Disorder Services, including Medication and Treatment
3. Gender Transition-Related Services
4. Testing, Treatment and Prevention of Sexual Transmitted Infections (for example, HPV vaccines)
5. Testing, Treatment and Prevention of HIV and AIDS (including pre-exposure prophylaxis known as PrEP)
6. Hepatitis C Testing, Treatment and Medication
7. Hepatitis B Testing, Treatment and Medication
8. Reproductive Services (for example, breast, cervical and prostate cancer screening, identification and treatment of minor infections)
9. Contraceptive Services
10. Fertility Services
11. Abortion Services
12. Pregnancy Testing and Counseling on Pregnancy Options
13. Any Visit Including Assessment of Sexual Risk, Pregnancy Intention, and/or Reproductive/Sexual/Pregnancy Coercion
14. Services Related to Sexual Assault
15. Domestic Violence Diagnosis, Services, Support and Counseling
16. Management of Abnormal Pap Smears
17. Diagnosis and Treatment of Vaginal Infections
18. Prenatal Care

The above sensitive health care services may be related to any type of health care visit, such as evaluation, screening, treatment/service, counseling, management and prescribed medications.

## **Will the name of the health care provider also be masked?**

No, the name of the provider will not be masked, even when the service description is masked. If your patient is concerned that the provider's name may reveal that the patient has accessed sensitive services, the patient should use one of the other options for protecting confidentiality, such as requesting that the form be sent to a different address, only be made available online, or that no SOP is sent.



## Other

### **Do these protections apply to health care bills as well as SOP forms?**

No. Your patient should contact their health care provider directly and ask about options of how to protect their privacy if they are concerned about the provider sending a bill.

### **What if my patient's health plan has a deductible?**

A deductible is the amount one pays for health care services before their health insurance plan starts to pay. With a \$2,000 deductible, for example, a patient or members of their family have to pay the first \$2,000 of health care services. After the deductible is fully paid, the patient and their family members usually pay only a co-pay or coinsurance for services.

If your patient wishes to use one of these privacy protections but their health plan has a deductible, they should know that the policyholder can still find out how much money has been paid so far towards the deductible. For example, if the patient pays \$100.00 for a mental health counseling visit, the policyholder would be able to see that \$100 was paid towards the \$2,000 deductible, but they would not know what the services were for. If the patient's deductible has already been fully paid prior to accessing the service, this does not apply.

### **What can my patient do if they have any problems with making the confidentiality request, or having the health insurance plan accept and follow the request? Or what if sensitive services aren't masked on the SOP?**

If your patient has any problems with submitting a request for confidentiality, getting their request accepted and honored by their health insurance plan, or with their health insurance plan masking sensitive services, they should do two things:

- Contact their health insurance plan to make a complaint and ask what needs to be done differently to make sure this does not happen again.
- Contact the Division of Insurance Consumer Services Section at 877-563-4467 or 617-521-7794. All complaints by phone must be followed up by a written submission to the Consumer Services Section. They must include at least the following information requested on the Insurance Complaint Form: their name and address; the nature of complaint; and their signature authorizing the internal release of any information regarding the complaint to help the Division with its review of the complaint. They may also fill out the complaint form online at: <https://www.mass.gov/files/documents/2017/10/25/css-complaint-form.pdf>.