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ADP BULLETIN

Title		Issue Date: December 16, 2008 Expiration Date:	Issue No. 08 - 13
Electronic Signatures in Electronic Health Record Systems Used by Counties and Providers			
Deputy Director Approval *Gigi Smith* *Deputy Director* *Information Management Services Division*	Function: [X]Information Management [ ]Quality Assurance [ ]Service Delivery [ ]Fiscal [ ]Administration [ ]	Supersedes Bulletin/ADP Letter No.:	

PURPOSE

This bulletin concerns the use of electronic signatures in Electronic Health Record (EHR) systems by counties and treatment providers when preparing and maintaining client records and files. Electronic signatures are methods that authorized individuals use to sign electronic clinical records in EHR systems. Because of the increasing use of electronic signatures by counties and providers in EHR systems, the California Department of Alcohol and Drug Programs (ADP) is providing information on the standards and requirements for the use of electronic signatures on the electronic client records and files maintained by counties and treatment providers. When State law concerning electronic signatures is complied with, ADP staff conducting audit, licensing and certification reviews will accept electronic signatures. The purpose of this bulletin is to communicate these State standards and requirements to counties and treatment providers.

Scope of this Bulletin

The scope of this bulletin is limited to the recognition of electronic signatures embedded within counties' and providers' electronic health record systems for purposes of auditing, licensing and certification reviews conducted by ADP. The scope does not include the use of electronic signatures within claims submitted to ADP or within any other electronic transmission of data to or from ADP.

DISCUSSION

ADP will accept electronic signatures on electronic health records in counties' and providers' systems for purposes of auditing, licensing and certification reviews when those county and provider systems satisfy Federal and California laws.

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Standards for Acceptable Electronic Signatures in Electronically Signed Records

ADP shall accept the use of electronic signatures in electronically signed records as equivalent to a manual signature affixed by hand for financial, program, and medical records audit and review purposes when those electronic signatures comply with California Government Code Section 16.5. This approval extends to all electronically signed records requiring signatures under Title 9 of the California Code of Regulations (CCR), sections 9400 et seq., that pertain to the delivery of alcohol and other drug (AOD) services.

Under California law, an electronic signature is defined as "an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature." An electronically signed record is a financial, program or medical record that is required to be signed under California or Federal law, California or Federal regulation, organizational policy or procedure, and that may be requested by ADP staff conducting an audit of a facility or reviewing a service provider for license or certification purposes.

California Government Code Section 16.5 says that the use of a digital signature by public entities shall have the same force and effect as the use of a manual signature if and only if it embodies all of the following attributes:

1. It is unique to the person using it.
2. It is capable of verification.
3. It is under the sole control of the person using it.
4. It is linked to data in such a manner that, if the data are changed, the digital signature is invalidated.
5. It conforms to regulations adopted by the Secretary of State.

The regulations adopted by the Secretary of State may be found in Title 2, CCR, sections 22000-22005. Additionally, counties and providers must satisfy the following documentation requirements.

1. Anyone who is empowered to electronically sign an electronically signed record shall submit a signed Electronic Signature Agreement to the county AOD administrator or administrator of the ADP direct contract provider agreeing to the terms of use for his/her electronic signature. A sample agreement form is attached, Exhibit 1. The original signed agreements shall be made available to ADP staff upon request.

2. On an annual basis, county AOD administrators, direct contract providers and county-contracted providers shall complete, sign and retain Electronic Signature Certification forms, Exhibit 2, certifying that the electronic signature mechanism within their systems complies with Government Code Section 16.5 and Title 2, CCR, section 22000 *et seq.* The Electronic Signature Certification form shall also contain a detailed explanation of how the electronic signature mechanism within the EHR system complies with Government Code Section 16.5 and Title 2, CCR, section 22000,

et seq. The counties and providers should use a format for this documentation that best meets their needs and circumstances. A sample certification form is attached. The original signed certification form must be made available to ADP staff upon request.

Counties remain responsible for taking appropriate security measures to safeguard the contents of all electronic records and complying with the California Information Practices Act (California Civil Code section 1798 et seq.), the Confidentiality of Medical Information Act (California Civil Code section 56 et seq.), California Government Code section 6254, and all other applicable federal and state laws and regulations.

Counties and providers may set additional restrictions or requirements, provided those restrictions or requirements meet the minimum requirements stated above and are consistent with applicable state and federal laws and regulations. Counties and providers are responsible for identifying applicable laws and regulations that may apply to restrictions or requirements they set.

Compliance with Federal Requirements

The Electronic Signatures in Global and National Commerce Act of 2000, commonly known as "E-Sign", establishes the basic rules for using electronic signatures and records in commerce. E-Sign was enacted to encourage electronic commerce by giving legal effect to electronic signatures and records and to protect consumers. E-Sign provides that, with respect to any transaction in or affecting interstate or foreign commerce, a signature may not be denied legal effect solely because it is in electronic form.

Both Medicare and the Health Information Portability and Accountability Act (HIPAA) allow the use of electronic signatures. Counties and providers that manage client health information must be in compliance with all applicable HIPAA privacy and security standards and meet the privacy requirements of Title 42, Code of Federal Regulations, Part 2.

HIPAA mandates that each health care entity maintain documentation demonstrating the development, implementation, and maintenance of appropriate security measures that include, at a minimum, the requirements and implementation features of those measures. In addition, entities must maintain necessary documentation to demonstrate that these measures have been periodically reviewed, validated, updated, and kept current. Counties and providers that have implemented electronic signatures in their EHR systems must comply with these HIPAA documentation requirements.

Electronically Signed Records for ADP Audits and Reviews

Electronic records and electronically signed records may replace paper-based records for purposes of an ADP audit or review. Usage of electronic records and electronically signed records by counties and providers to satisfy ADP's regulations and requirements shall comply with the following criteria:

- Counties and providers will conform to the State laws and regulations for electronic signatures
- When ADP staff conduct audits and reviews, counties and providers shall provide :
    - Physical access to electronic health record systems;
    - Adequate computer access to the electronic health records needed for the audit and review, including written procedures describing how to access those records;
    - System or network access to electronic records, e.g. user IDs and passwords;
    - Access to printers and capability to print necessary documents;
    - Technical assistance as needed.

REFERENCES

- Electronic Signatures in Global and National Commerce Act of 2000
- Federal law [15 USC, section 7006] defines an electronic signature
- California Government Code Section 16.5 defines requirements for electronic signatures
- Title 2, California Code of Regulations, Sections 22000 through 22005 available at http://www.sos.ca.gov/digsig/regulations.htm
- Title 9, California Code of Regulations, sections 9400 *et seq.*
- California Information Practices Act (California Civil Code sections 1798 *et seq.*)
- Confidentiality of Medical Information Act (California Civil Code sections 56 *et seq.*)
- California Government Code section 6254.

BACKGROUND

ADP regulations require that signatures from authorized individuals, e.g., a physician or counselor, be affixed to certain forms and records and placed in clients' case file in order for them to be deemed acceptable client records. ADP staff routinely review these forms when conducting site visits for auditing, licensing and certification purposes. When conducting these visits, ADP practice has been to require the counties and service providers to present ADP staff with the forms on paper with hand-written signatures.

Electronic Health Record Systems and Electronic Signatures

Counties and treatment providers in California are moving towards use of EHR systems to support their AOD and mental health services. EHR systems are paperless, real-time, client information resources for service providers. With EHR systems, the entire

set of information regarding a client's health, e.g., assessments, treatment plans, encounters, billing and claims forms, prescriptions, etc., is completely electronic and incorporated into the system. In EHR systems, forms are automated and allow for electronic signatures to be embedded with the electronic form in the system. EHR systems have various mechanisms built into their software to implement and control the use of electronic signatures. These electronic signatures on electronic health records are used to show that the authorized individuals signed the forms as required.

Because EHR systems maintain the entire health record, including forms with electronic signatures, counties and providers that have implemented these systems no longer have a need to maintain paper files for their administrative and operational purposes. However, ADP staff conducting site visits for audit, licensing or certification purposes continue to require, per ADP policy, a signature on paper. Given the trend towards use of electronic signatures in EHR systems, ADP will accept electronic signatures on electronic health records for purposes of auditing, licensing and certification when State standards are complied with.

QUESTIONS/MAINTENANCE

If you have questions regarding this bulletin, please contact:

Information Management Services Division
(916) 323-8333
Email: ITHelp@adp.ca.gov

An additional copy of this document may be requested through the ADP Resource Center at (800) 879-2772. This bulletin is also available on the ADP Web page at www.adp.ca.gov.

EXHIBITS

Exhibit 1: Electronic Signature Agreement
Exhibit 2: Electronic Signature Certification

DISTRIBUTION

County Alcohol and Drug Program Administrators
Strategic Local Government Services, LLC
Director's Advisory Council

Exhibit 1

ELECTRONIC SIGNATURE AGREEMENT

This Agreement governs the rights, duties, and responsibilities of _____ County in the use of an electronic signature in _____ County. The undersigned (I) understands that this Agreement describes my obligations to protect my electronic signature, and to notify appropriate authorities if it is stolen, lost, compromised, unaccounted for, or destroyed. I agree to the following terms and conditions:

I agree that my electronic signature will be valid for one year from date of issuance or earlier if it is revoked or terminated per the terms of this agreement. I will be notified and given the opportunity to renew my electronic signature each year prior to its expiration. The terms of this Agreement shall apply to each such renewal.

I will use my electronic signature to establish my identity and sign electronic documents and forms. I am solely responsible for protecting my electronic signature. If I suspect or discover that my electronic signature has been stolen, lost, used by an unauthorized party, or otherwise compromised, then I will immediately notify the County Alcohol and Drug Administrator or his/her designee and request that my electronic signature be revoked. I will then immediately cease all use of my electronic signature. I agree to keep my electronic signature secret and secure by taking reasonable security measures to prevent it from being lost, modified or otherwise compromised, and to prevent unauthorized disclosure of, access to, or use of it or of any media on which information about it is stored.

I will immediately request that my electronic signature be revoked if I discover or suspect that it has been or is in danger of being lost, disclosed, compromised or subjected to unauthorized use in any way. I understand that I may also request revocation at any time for any other reason.

If I have requested that my electronic signature be revoked, or I am notified that someone has requested that my electronic signature be suspended or revoked, and I suspect or discover that it has been or may be compromised or subjected to unauthorized use in any way, I will immediately cease using my electronic signature. I will also immediately cease using my electronic signature upon termination of employment or termination of this Agreement.

I further agree that, for the purposes of authorizing and authenticating electronic health records, my electronic signature has the full force and effect of a signature affixed by hand to a paper document.

Requestor Signature _____ Date _____

Requestor Printed Name _____

Approver Signature _____ Date _____

Title _____

Exhibit 2

COUNTY ALCOHOL AND DRUG PROGRAM ADMINISTRATOR
ELECTRONIC SIGNATURE CERTIFICATION

I certify that the electronic signatures affixed to the electronic health records on the computer systems employed by or on behalf of _____ comply with California Government Code Section 16.5 and Code of California Regulations Title 2, Section 22000 et seq.

_____ Date _____
Signature of County Alcohol and Drug Program Administrator

_____ Date _____
Printed Name of County Alcohol and Drug Program Administrator

Attached is a detailed explanation of how the electronic signature mechanism within our EHR system complies with Government Code Section 16.5 and Title 2, CCR, section 22000, et seq.