STATE OF CALIFORNIA - HEALTH AND HUMAN SERVICES AGENCY

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ADP BULLETIN

Title		Issue Date: March 9, 2010 Expiration Date: Until Rescinded	Issue No. 10 - 01
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. 08-13	

PURPOSE

This bulletin concerns County and treatment provider use of electronic signatures in Electronic Health Record (EHR) systems when preparing and maintaining client records and files. The California Department of Alcohol and Drug Programs (ADP) is providing this information to clarify the standards and requirements for the use of electronic signatures on the electronic client records and files maintained by counties and treatment providers. Authorized individuals use electronic signatures to sign electronic records in EHR systems. ADP staff conducting audits, licensing, or certification reviews will accept electronic signatures when the signature complies with State law. 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' EHR systems for purposes of auditing, licensing, or 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

The increased use of EHR systems and electronic methods of signing records has prompted ADP to issue standards regarding the use of electronic signatures in records reviewed by its auditors and licensing and certification reviewers.

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In addition to the addressees, this bulletin should be reviewed by all appropriate county staff in areas including, but not limited to, compliance, audit, clinical, quality improvement, fiscal, and information technology. Topics covered in this letter include:

- Definitions of an electronic signature and an electronically signed record
- Standards for an electronic signature used in an electronically signed record
- Information security considerations
- Obtaining consumer signatures
- Health Insurance Portability and Accountability Act (HIPAA) compliance
- ADP audit requirements for electronically signed records
- Electronic Signature - Definition

Federal law (15 USC § 7006) defines an electronic signature as "an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record."

Under California law (California Civil Code § 1633, subsection f), an electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record. As specified in California Civil Code § 1633, subsection h, the use of an electronic signature or digital signature shall have the same force or effect as a manual signature.

Electronically Signed Record - Definition

For the purposes of these standards, an electronically signed record is a financial, program, or medical record that (1) is required to be signed under California or Federal law, California or Federal regulation, or organizational policy or procedure, and (2) may be requested during an audit by any Federal, State, or local government audit organization or public accountant.

Standards for Electronic Signatures in Electronically Signed Records

ADP approves 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 or program review purposes. This approval extends to all electronically signed records requiring signature under the California Code of Regulations, Title 9, Division 1. The electronic signature should meet the following requirements:

1. The electronic signature mechanism is
    a) Unique to the signer,
    b) Under the signer's sole control,
    c) Capable of being verified, and
    d) Linked to the data so that, if the data are changed, the signature is invalidated.

2. Computer systems that utilize electronic signatures comply with the following Certification Commission for Healthcare Information Technology (CCHIT) certification criteria or equivalent: Security: Access Control, Security: Audit, and Security: Authentication.

3. Counties maintain an Electronic Signature Agreement (Exhibit 1) for the terms of use of an electronic signature signed by both the individual requesting electronic signature authorization and the County Alcohol and Drug Program Administrator or his/her designee.

4. County Alcohol and Drug Program Administrators complete a County Alcohol and Drug Program Administrator's Electronic Signature Certification form (Exhibit 2), certifying that electronic systems used by the county's alcohol and drug operations, including contract provider systems, meet the standards.

5. The signed Electronic Signature Certification and signed Electronic Signature Agreements from county employees and contract providers, or copies thereof, are available to the ADP auditor or program reviewer at the time of an audit, licensing, or certification review.

Under these standards, counties may set additional restrictions or requirements beyond what is presented in this ADP Bulletin, provided those restrictions or requirements meet the minimum requirements stated above and are consistent with applicable state and federal laws and regulations. County Alcohol and Drug Administrators are responsible for identifying laws and regulations that may apply to restrictions or requirements they set.

Information Security Considerations

ADP standards do not require encryption of the data in the electronically signed record for compliance. However, counties are responsible for taking appropriate security measures to safeguard the contents of all electronic records and complying with Welfare and Institutions Code section 5328, the Confidentiality of Medical Information Act, California Government Code section 6254, and all other applicable federal and state laws and regulations.

Obtaining Consumer Signatures

In many situations, the substance abuse consumer, or his/her representative, must acknowledge his/her willingness to participate in and accept the treatment plan. In paper-based systems, the consumer, or his/her representative, physically signs a document to that effect. As an alternative to paper, it is proposed that counties and providers use any of the following approaches:

1) Scanning paper consent documents, treatment plans or other medical record documents containing consumer signatures;

2) Capturing signature images from a signature pad;
3) Recording biometric information, such as a fingerprint using a fingerprint scanner; or,
4) Entering authenticating information, such as a password or personal identification number (PIN), known only to the consumer or authorized representative.

If a signature is unavailable, an electronically signed explanation must be provided by the County Alcohol and Drug Program Administrator or his/her designee.

Health Insurance Portability and Accountability Act (HIPAA) Compliance

In addition to complying with the standards in this letter for electronic signatures and electronically signed records, counties and providers that manage consumer substance abuse information must be in full compliance with all applicable HIPAA security standards. Counties and providers are required to be in full compliance with the timelines and other requirements established by the federal government.

ADP Audit Requirements for Electronically Signed Records

Electronic records and electronically signed records may replace paper-based records for purposes of an ADP audit, licensing, or certification review. Counties and contract providers must conform to the standards for electronic signatures in electronically signed records set forth in this ADP Bulletin. When ADP conducts an audit, licensing, or certification review, counties and contract providers must make the following available upon arrival of ADP staff at the County or provider site:

- Physical access to EHR systems
- Adequate computer access to the EHR needed for the audit or review
- System or network access to electronic records such as user IDs and passwords
- Access to printers and capability to print necessary documents
- Technical assistance as requested
- Scanned documents, if needed, that are readable and complete

The above documentation shall be sufficient to ensure that electronically signed records are capable of verification by qualified auditors, analysts, or investigators.

QUESTIONS/MAINTENANCE

If you have questions regarding this bulletin, please contact:

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Enterprise Architect and Information Security Officer
Information Management Services Division
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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
ADP Deputy Directors
Denise Blair, CIO, Department of Mental Health

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 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 _____ County comply with the provisions of Department of Alcohol and Drug Programs Electronic Signatures Bulletin 10-01.

_____ 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 ADP Bulletin 10-01.