

Healthcare Ambient Listening (AI Scribe) Consent Guide

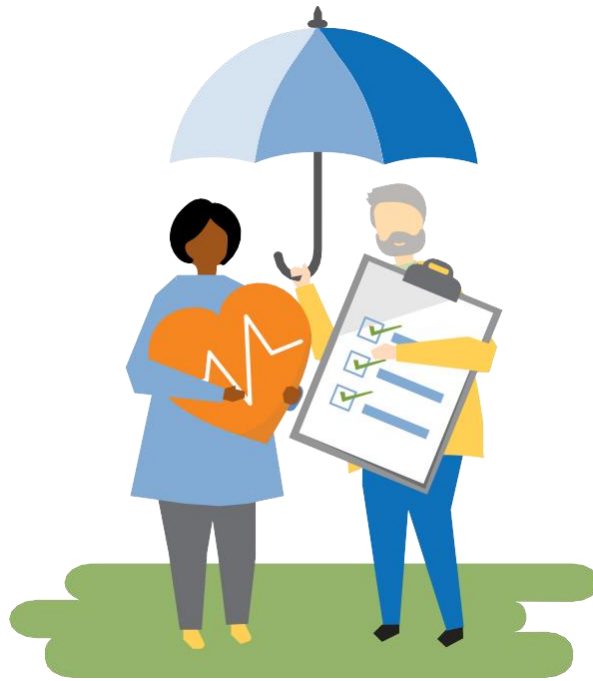
For California Physicians and
Clinical Operations Teams



**CALIFORNIA
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PURPOSE

This guide outlines requirements and best practices for consent when using ambient listening (AI scribe) tools in California clinical settings. This document is educational and operational in nature and does not constitute as legal advice.

SECTION 1: WHAT IS REQUIRED

Recording In-Person Clinical Encounters

- **Consent Required:** Yes, before recording, at every encounter
 - Must be explicit, not implied
- **Type:** Verbal consent is legally sufficient
- **Action:** Document consent in note/chart
California is an all-party consent state. Consent must be obtained from all parties in the room

Recording Telehealth or Telephone Visits

- **Consent Required:** Yes, at every encounter
- **Type:** Verbal consent is legally sufficient
Consent must be obtained from all parties participating on video/call
- **Action:** Document consent in note/chart

SECTION 2: BEST PRACTICE

Get verbal consent at the start of the visit.

- Explain tool in plain language
- Obtain consent from third parties present
- Allow easy opt-out without penalty
- Stop recording immediately if consent is withdrawn
- Document consent in the medical record
 - Suggested verbiage: “AI scribe explained; patient verbally consented/declined”



Written patient consent is not required for the use of ambient listening or AI scribe tools when they are used solely to support clinical documentation for treatment or health care operations. Verbal informed consent, documented in the medical record, is sufficient and preferred.

CALIFORNIA PRACTICAL COMPLIANCE SUMMARY

Requirement	California Standard
<i>Consent required?</i>	<i>Yes – consent required from all parties</i>
<i>Verbal consent sufficient?</i>	<i>Yes, if explicit and documented</i>
<i>Written consent required?</i>	<i>Not strictly required; when provided, it can be prudent but should not replace or undermine informed, encounter-specific consent.</i>
<i>Passive notice only (e.g., signage)?</i>	<i>No – insufficient</i>
<i>Opt-out required?</i>	<i>Yes</i>
<i>HIPAA compliance alone sufficient?</i>	<i>No</i>

SUPPORTING MATERIALS

California-Compliant Verbal Consent Script (example):

“Before we begin, I want to let you know that I use a secure AI tool that listens to our conversation and creates a draft medical note for me. Our conversation would be audio-recorded for this purpose. I review and finalize the note myself, and the recording is not used for your care beyond documentation. This is completely optional. If you prefer not to be recorded, that’s fine and will not affect your care today. Do I have your permission to use this tool for today’s visit?”

If the patient agrees:

“Thank you. I’ll note your consent and we’ll get started.”

If the patient declines:

“No problem at all. We’ll continue without the recording.”

Documentation in the note/chart (example):

Patient was informed of ambient AI documentation and provided verbal consent to audio recording for documentation purposes prior to start of visit.

While this is not related to consent, it is critical to maintain a signed BAA with the AI scribe vendor because the tool involves the recording of PHI.

References

California Department of Health Care Services. (n.d.). Telehealth frequently asked questions. <https://www.dhcs.ca.gov/provgovpart/Pages/TelehealthFAQ.aspx>

Gerke, S., & Simon, D. A. (2025). *How should we think about ambient listening and transcription technologies' influences on EHR documentation and patient-clinician conversations?* **AMA Journal of Ethics**, 27(11), E787–E795.

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