

# Privacy Explained for CBOs: Navigating HIPAA, Privacy Laws and Technology for Care Collaboration

Legal, technology and care coordination experts will demystify privacy laws and reveal how technology can support privacy compliance, ease data-sharing and support care collaboration among CBOs and healthcare partners.

**December 5, 2023**  
**2 – 3 p.m.**



*Presented by:*



**Andrea Frey**  
Senior Counsel  
Hooper, Lundy & Bookman, P.C.



**Lauran Hardin**  
Chief Integration Officer  
HC2 Strategies



**John Weir**  
Managing Director  
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# Housekeeping

- Participants have the ability to mute/unmute - *please remain muted for the presentation*
  - **There will be time for discussion and Q&A at the end of this webinar**
- This event is being recorded and slides will be distributed following the event
- If you have unanswered questions at the end of this session, we are hosting office hours later this month to support deeper discussions

# Agenda

## 1. Data Sharing & Care Collaboration

*Lauran Hardin - HC<sup>2</sup> Strategies*

## 2. Privacy Law Considerations

*Andrea Frey - Hooper, Lundy & Bookman*

## 3. Technical Considerations

*John Weir - BluePath Health*

## 4. Case Discussion

*Lauran Hardin - HC<sup>2</sup> Strategies*

## 5. Audience Q&A



# Data Sharing & Care Collaboration

*Lauran Hardin - HC<sup>2</sup> Strategies*

# CalAIM and Care Coordination



- Understand **client story**
- Include **cross continuum team**
  - each person/agency intersecting with the client
- Focus on collaborative finding of **solutions**
- Create a **shared plan of care**

# Common Social Service Support Systems: New Partners in Delivery

## Housing Supports

Public Housing Authorities, PSH, RRH, and other housing programs

## Healthcare Systems

Hospital systems, VA Medical Centers

## Child Welfare

Foster care systems, Child Protective Services, Juvenile systems

## Behavioral Health

Mental health clinics

## Jails / Police

Police, Police homeless outreach teams, Jails, Prisons, Department of Corrections, Court Supportive Services

## Managed Care Systems

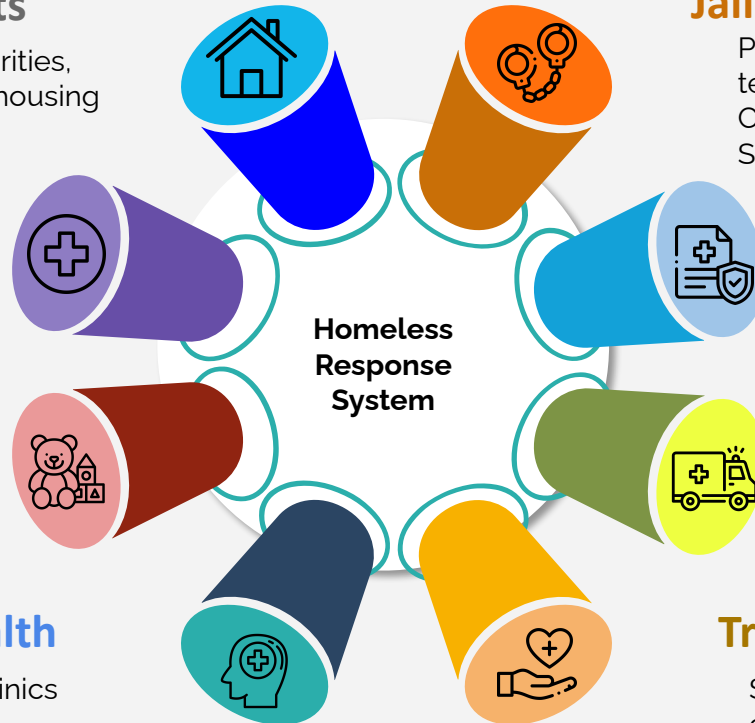
Medicaid, Medicare, Health insurance providers

## Emergency Transport

Ambulances, Emergency Medical Services

## Treatment Facilities

Substance use treatment centers, Addiction services



# CalAIM and Case Conferencing



“Case Conferencing differs from routine coordination. Case conferencing is a more formal, planned, and structured event separate from regular contacts. The goal of case conferencing is to provide holistic, coordinated, and integrated services across providers, and to reduce duplication. Case conferences are usually interdisciplinary, and include one or multiple internal and external providers.”

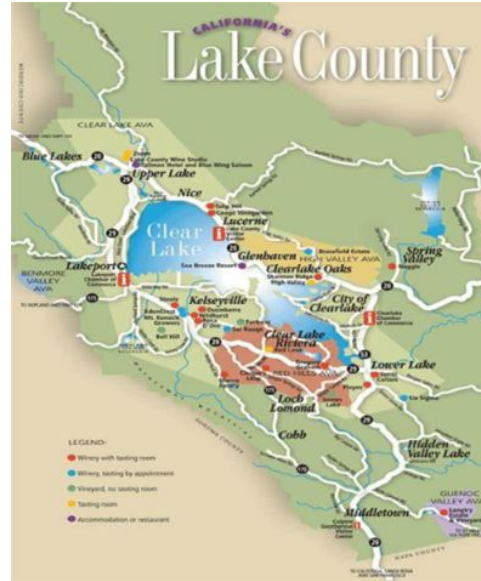
[Case Coordination and Case Conferencing \(ny.gov\)](https://www.ny.gov/case-coordination-and-case-conferencing)



# A National Best Practice



Memphis, TN  
Uninsured Population



Lake County, CA  
Cross Sector Complex



St. Louis, MO - City Wide  
All Hospitals, Homeless  
Response Systems & CBOs



# Three Common California Scenarios



ECM + Cross-Sector  
Providers Individual  
Conference



Community Case  
Conferencing Table



Using data to case find  
clients for CalAIM and  
compare with another  
agency

# Privacy Law Considerations

*Andrea Frey - Hooper, Lundy & Bookman*



# HIPAA – What is it?

The **Health Insurance Portability and Accountability Act (HIPAA, not HIPPA)** and its implementing regulations under the Privacy, Security, and Breach Notification Rules protect the privacy and security of health information and give patients rights to their health information.

HIPAA establishes standards to safeguard the **protected health information (PHI)** that you hold if you're one of these **covered entities** or their **business associate**:

- Health plan
- Health care clearinghouse
- **Health care provider that conducts certain health care transactions electronically**



# HIPAA – Covered Entities and Related Definitions

<b>Covered Entity (CE)</b>	Includes a “health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.”
<b>Health Care Provider</b>	Includes a “person or organization who furnishes, bills, or is paid for health care in the normal course of business”
<b>Health Care</b>	Means, in part, “ <b>services, or supplies related to the health of an individual,</b> ” including but not limited to “[p]reventive, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body[.]”
<b>Transactions</b>	As used above in the definition of a CE, includes an electronic exchange of health care data to determine (among other types of information transmissions) things like: payment and remittance advice; claims status; eligibility; coordination of benefits; claims and encounter information; enrollment and disenrollment; referrals and authorizations.

# HIPAA – Covered Entities and their Business Associates

- By law, the HIPAA Privacy Rule applies only to CEs– health plans, health care clearinghouses, and certain health care providers.
  - But, most health care providers and health plans do not carry out all their health care activities and functions alone.....
  - Under the Privacy Rule, CEs may disclose PHI to an entity in its role as a “**business associate**” (**BA**) only to help the CEs carry out its health care functions – *not for the BA's independent use or purposes, except as needed for the proper management and administration of the BA.*
- Covered health care providers or plans must first “obtain satisfactory assurances” that the BA will use the PHI only for the purposes for which it was engaged by the CE, will safeguard the information from misuse, and will help the CE comply with some of the CE’s duties under the Privacy Rule – aka a “**Business Associate Agreement**” (**BAA**).

# HIPAA – Business Associates and Related Definitions

- A “**business associate**” (BA) includes a business that, on behalf of a CE, “creates, receives, maintains, or transmits protected health information” to carry out:
  - a regulated health care activity or function; e.g. health care operations or payment activities, such as claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities, billing, benefit management, practice management, and repricing; or
  - legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services

## *Examples of business associates include:*

- Third-party administrator that assists a health plan with claims processing
- Consultant that performs utilization reviews for a health care provider
- Independent medical transcriptionist that provides transcription services



# HIPAA – Are you subject to it?

**Q: Does the person, business, or agency furnish, bill, or receive payment for, health care in the normal course of business? 1**



**Q: Does the person, business, or agency transmit (send) any covered transactions electronically? 2**



# HIPAA – Are you subject to it?



[Home](#) / Medi-Cal Transformation



**Reminder:** CalAIM mandates that managed care plans (MCPs) [offer Enhanced Care Management \(ECM\)](#), which includes intensive care coordination of health and health-related services by CBOs to address medical and non-medical needs of the highest-need members, and allows for [coverage of 14 types of optional Community Supports \(CS\)](#).

Are you a CalAIM ECM or CS provider electronically submitting claims to plans?

*If yes, then you may be a “covered entity” under HIPAA.*



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# HIPAA – Are you subject to it?

If you are not a covered entity, do you qualify as a **“business associate”**?



1. Are you providing services to or on behalf of a CE (e.g., a health care provider or plan) to support the CE’s payment or health care operations related activities?
  - Such as claims processing or administration, data analysis, utilization review, quality assurance
2. Will you have access to the CE’s PHI so that you can perform the function or activity?

**OR.....**

1. Will you receive PHI from the CE for purposes of providing services directly to an individual (and not on behalf of a CE)?

# Privacy Rules Basics

## 45 CFR Subpart C

**The Privacy Rule generally protects patients' PHI that is held or transmitted in any form**, including electronic, paper, or verbal, by a CE and/or BA and governs the permitted, required, and prohibited uses and/or disclosures of PHI by CEs and BAs.

- For example, CEs and BAs may only use or disclose PHI without an authorization signed by the patient under limited circumstances, including but not limited to:
  - **uses/disclosures for treatment, payment, & healthcare operations (TPO)**
  - disclosures directly to the patient or patient representative
  - as required by law
  - pursuant to a court order or validly served subpoena
    - after either notice provided to patient or qualified protective order

The Privacy Rule also requires CEs and BAs to, among other obligations:

- Notify patients about their privacy rights and how you use their information
- Adopt privacy procedures and train employees to follow them
- Assign an individual as a Privacy Officer to make sure you're adopting and following privacy procedure



# Privacy Rule Basics

## 45 CFR Subpart C

### Sharing Information with Other Health Care Professionals

To coordinate your patient's care with other providers, the Privacy Rule lets you:

- Share information with doctors, hospitals, and ambulances for [treatment, payment, and health care operations](#), even without a signed consent form from the patient
- Share information about an incapacitated patient if you believe it's in your patient's best interest
- Use health information for [research](#) purposes
- Use email, phone, or fax machines to communicate with other health care professionals and with patients, as long as you use safeguards

<https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/HIPAAPrivacyandSecurity.pdf>

**Takeaway:** The HIPAA Privacy Rule permits CEs to share PHI with other CEs for **treatment purposes** without patient authorization, meaning that CalAIM providers can share and receive PHI from other health care providers for care coordination and case management activities that qualify as treatment.

# Privacy Rule Basics

**Does HIPAA permit health care providers to share protected health information (PHI) about an individual with mental illness with a third party that is not a health care provider for continuity of care purposes? For example, can a health care provider refer a homeless patient to a social services agency, such as a housing provider, when doing so may reveal that the basis for eligibility is related to mental health?**

[3008-Does HIPAA permit health care providers to share PHI about an individual with mental illness with a third party that is not a health care provider for continuity of care purposes? | HHS.gov](#)



# Privacy Rule Basics for Treatment Disclosures

## Answer:

HIPAA, with few exceptions, treats all health information, including mental health information, the same. HIPAA allows health care providers to disclose protected health information (PHI), including mental health information to other public or private-sector entities providing social services (such as housing, income support, job training) in specified circumstances. For example:

- A health care provider may disclose a patient's PHI for treatment purposes without having to obtain the authorization of the individual. Treatment includes the coordination or management of health care by a health care provider with a third party. Health care means care, services, or supplies related to the health of an individual. Thus, health care providers who believe that disclosures to certain social service entities are a necessary component of, or may help further, the individual's health or mental health care may disclose the minimum necessary PHI to such entities without the individual's authorization. For example, a provider may disclose PHI about a patient needing mental health care supportive housing to a service agency that arranges such services for individuals

“Thus, health care providers who believe that **disclosures to certain social service entities** are a necessary component of, or may help further, the individual's health or mental health care **may disclose the minimum necessary PHI to such entities** without the individual's authorization. For example, a provider may disclose PHI about a patient needing mental health care supportive housing to a service agency that arranges such services for individuals.”

[3008-Does HIPAA permit health care providers to share PHI about an individual with mental illness with a third party that is not a health care provider for continuity of care purposes? | HHS.gov](https://www.hhs.gov/hipaa/for-professionals/special-topics/3008-Does-HIPAA-permit-health-care-providers-to-share-PHI-about-an-individual-with-mental-illness-with-a-third-party-that-is-not-a-health-care-provider-for-continuity-of-care-purposes/)

# HIPAA Privacy Rule Takeaways for CBOs

1. If your organization is a CalAIM ECM or CS provider electronically submitting claims to plans, you may qualify as a “**covered entity**” under HIPAA, otherwise your organization is a non-covered entity.
2. Your organization may also qualify as a “**business associate**”, but only if it performs covered functions on a CE’s behalf. *In such cases, a BAA is required where you receive PHI to perform such functions.*
3. If you are a covered entity – your organization must comply with the **HIPAA Privacy Rule** with respect to uses and disclosures of PHI.
  - However, under the treatment exception, HIPAA permits disclosures of PHI to be made by and between covered entities and other health care providers for treatment purposes.
4. If you are a non-covered entity, you may still receive PHI from covered entities for treatment purposes, subject to the minimum necessary standard, or where the patient has signed an authorization.
5. Don’t forget to analyze the applicability of other health privacy laws!

# Applicability of Other Privacy Laws

## HUD/USDA Food and Nutrition Service (WIC)

- Impose confidentiality obligations with regard to information that personally identifies housing and WIC applicants and participants as confidential

## Psychotherapy Notes

- Notes recorded by a mental health professional that document and analyze an individual's counseling session and that are separated from the rest of the individual's medical record – generally require patient authorization to release.

## SUD Records under 42 CFR Part 2

- Federal regulations that serve to protect patient records created by “federally assisted programs” for the treatment of substance use disorders (SUD). In general, Part 2 programs are prohibited from disclosing any information that would identify a person as having or having had a SUD unless:
  - the patient provides written consent;
  - a valid court order is issued; or
  - the disclosure is for a “medical emergency”, “audit/evaluation”, or “research”

## California Laws

- Confidentiality of Medical Information Act (generally analogous to HIPAA, but see Civil Code S. 56.104)
- Lanterman-Petris Short Act protects info and records obtained in the course of providing mental health services by a covered facility
- *Don't forget to analyze other potential restrictions for Patient Privileged Records, Victim's Records, HIV/AIDS Test Results, Reproductive Health Records, Gender-affirming care Records, etc.*

# CalAIM & Applicability of Other Privacy Laws

## Cal. Welf. & Inst. Code 14184.102(j) has implications for information sharing for CalAIM purposes: *Review the CalAIM Data Sharing Authorization Guidance*

AB 133 amended California Welfare and Institutions Code Section 14184.102(j) to permit Medi-Cal Partners to disclose PII among one another so long as such disclosure helps implement CalAIM and is consistent with federal law.

### Limited Changes to State Law

The permitted disclosures authorized by the new subsection mean that other provisions of state law do not prevent the sharing of information, so long as Medi-Cal Partners:

1. Disclose information for purposes of providing services or coordinating care for Members (see definition), receiving reimbursement for such services or care coordination, or improving the quality of care delivered to Members; and
2. Comply with federal law (e.g., HIPAA, 42 CFR Part 2)

### Who are “Members?”

- Individuals enrolled in a managed care plan within Medi-Cal
- Those receiving behavioral health services under Medi-Cal
- Justice-involved individuals in Medi-Cal Fee-for-Service (FFS)

# California's Data Exchange Framework

## The Vision for Data Exchange in California

Once implemented across California, the Data Exchange Framework (DxF) will create new connections and efficiencies between health and social services providers, improving whole-person care.

The DxF is California's first-ever statewide Data Sharing Agreement (DSA) that requires the secure and appropriate exchange of health and human services information to enable providers to work together and improve an individual's health and wellbeing.



*CDII Information is Power Webinar, March 23, 2022*  
<https://www.cdii.ca.gov/committees-and-advisory-groups/data-exchange-framework/>

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# CA's Data Exchange Framework



## CalHHS Data Exchange Framework Policy and Procedure

**Subject:** Privacy Standards and Security Safeguards

**Status:**

**Policy:** OPP-6

**Publication Date:**

**Version:** 1.1

DxF participants that are **non-covered entities** must comply:

- With the HIPAA Privacy Rule regarding permitted uses and disclosures of PHI, including the minimum necessary standard and verification requirements, and
- With certain HIPAA Security Rule provisions related to implementing “appropriate” administrative, physical, and technical safeguards to protect HSSI.



# Technical Considerations

*John Weir – BluePath Health*



# HIPAA's Importance to Health IT

## HIPAA Security Rule

Establishes national standards to protect individuals' electronic protected health information that is created, received, used or maintained by Covered Entities and their Business Associates

Physical  
Safeguards

Administrative  
Safeguards

Technical  
Safeguards

# Key Tenets of Technical Compliance

- All PHI must be encrypted at rest and in transit.
- Each individual with system(s) access must have unique credentials to access and communicate PHI.
- Technology use must have automatic log-off capabilities when left unattended for a to-be-determined timeframe.

# HIPAA Technical Safeguards

Access Controls

Audit Controls

Integrity Controls

Transmission Security



Cloud-Based Platforms



Locally Hosted Platforms

# HIPAA Technical Safeguards – Policies & Procedures

Category	Policy & Procedure(s)	Description
ACCESS CONTROLS	Access Control and Validation	Establish role-based access controls ensuring tiered data access as needed
	Access Establishment and Modification	Process for creating and update user access
	Access Termination	Guidance on closing out user access upon termination
	Automatic Log-off	Requires log-off process including automated session log-off when unattended
	Unique User ID	Establishes guidance for unique user identification
	Person or Entity Authentication	Establish private identify proofing process (may include two-factor authentication controls)
	Password Management	Guidance on password generation and use, including storage prohibitions
INTEGRITY CONTROLS	Data Backup and Storage	Ensure ongoing access to a secured backup of data that is technically and physically secure
	Data Integrity Controls	Establish methods to protect data from unauthorized alteration or destruction
	Malware Protection	Institute process for automated protection from viruses and other malware
AUDIT CONTROLS	Audit Controls	Process to audit systems for use access and identification of unauthorized access
	Log-in Monitoring	Establish controls associated with log-in activity, attempted and discrepancies
	Information Systems Activity Review	Periodic review of audit logs, access reports, and ensure security controls are appropriate
TRANSMISSION CONTROLS	Data Transmission Security	Requires data transmission encryption such as 256-bit encryption
	Encryption and Decryption	Establish encryption that is compliant with FIPS 140-2 standard (or most current version); strong password encryption, encryption key access restrictions

# Common Platforms for CBOs



## Closed Loop Referral Platforms

- Resource directory service(s)
- Individual demographics and referral requests
- Social needs monitoring
- Referral fulfillment and tracking
- Referral management data reporting and analytics



## Community Case Management Systems

- Program enrollment and eligibility/authorization tracking
- Collaborative care planning and care team information
- Individual communications and interactions tracking
- Follow up scheduling and task management
- Case management alerts
- Care coordination workflows
- Reporting



## Community Information Exchange Platforms

- Resource directory service(s)
- Integrated Referral management
- Collaborative care planning and care team information
- Individual assessment data accessible based on organization type and roles
- Bi-directional data exchange with other platforms
- Alerts and reminders for services and follow up
- Reporting and analytics



# Case Discussion

*Lauran Hardin – HC<sup>2</sup> Strategies*

# Case Discussion

## ECM + Cross-Sector Providers Individual Conference



What would need to be  
in place to hold the  
conference?

# Case Discussion

## Community Case Conferencing Table



What would need to be  
in place to hold the  
conference?

# Case Discussion

Using data to case find clients and compare with another agency



What would need to be in place to share the data?

# Audience Q&A



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# Office Hours

Drop in at any time during the hour to discuss your questions, challenges, and opportunities. No registration required.

## **BluePath Health with Hooper, Lundy & Bookman**

December 6, 2023; 1-2pm

Click here to join: [zoom](#)

## **HC<sup>2</sup> Strategies**

December 7, 2023; 1-2 pm

Click here to join: [zoom](#)

# Resources

# Glossary

**BA:** Business Associate

**BAA:** Business Associate Agreement

**CBO:** Community-Based Organization

**CE:** Covered Entity

**CS:** Community Supports

**DSA:** Data Sharing Agreement

**DxF:** Data Exchange Framework

**ECM:** Enhanced Care Management

**FFS:** Fee-For-Service

**HIPAA:** Health Insurance Portability and Accountability Act

**HSSI:** Health and Social Service Information

**MCP:** Managed Care Plans

**PHI:** Protected Health Information

**PII:** Personal Identifiable Information

**PSH:** Permanent Supportive Housing

**RRH:** Rapid Re-Housing

**SUD:** Substance Use Disorder

**WIC:** Women, Infants, & Children Program



# Case Conferencing Best Practices and Toolkits

Vest, J., Caine, V., Harris, L., Watson, D., Menachemi, N. & Halverson, P. (2018). Fostering local health department and health system collaboration through case conference for at-risk and vulnerable populations. *American Journal of Public Health*, 108(5), 649-651. <https://doi.org/10.2105/AJPH.2018.304345>

Yeager, V., & Taylor, H. (2021). Primary care case conferences to mitigate social determinants of Health: A Case Study from one FQHC system. *The American Journal of Accountable Care*, 9(4), 12-19. <https://doi.org/10.37765/ajac.2021.88802>

## Toolkits and Resources

[Learning Brief: Data-Sharing Between Homelessness and Health Systems - Community Solutions SSVF VA EHA Case Conferencing.pdf](#)

NY State Case Conferencing Template  
[Case Coordination and Case Conferencing \(ny.gov\)](#)  
[CASE CONFERENCE FORM \(ny.gov\)](#)

[Effective Case Conferencing with Teams \(hrsa.gov\)](#)  
HIV Case Conferencing Guide: [CQII Case Conferencing IG final Jan2023.pdf \(targethiv.org\)](#)  
US AID complex children: [case conferencing an innovative approach.pdf \(crs.org\)](#)

# Privacy Law Resources

CMS and the Office for Civil Rights (the agency that enforces HIPAA) have put together several resources regarding HIPAA that are available online, including:

- [HIPAA Basics for Providers: Privacy, Security, & Breach Notification Rules](#)
- [Covered Entities and Business Associates](#) summary
- This general [summary](#) and this more detailed [privacy brief](#) regarding the HIPAA Privacy Rule
- This [summary](#) of the HIPAA Security Rule, which includes a security risk assessment tool and guidance
- [Business Associate Agreement](#) template

CDII has also released the [Statewide Health Information Policy Manual](#) (SHIPM) and [State Health Information Guidance](#) (SHIG) to help clarify federal and state laws that affect disclosure and sharing of health information.

# Technical Resources

- [HIPAA Security Risk Assessment Tool](#): provides CEs and BAs with a self-assessment to identify areas of risk that must be addressed through policies and procedures, associated with technical, physical or administrative safeguards.
- [HIPAA Security Rule FAQ](#)