



OPERATIONAL MEMO

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| TITLE: | HIPAA REQUIREMENTS FOR COUNTY DEPARTMENTS OF HUMAN/SOCIAL SERVICES |
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Purpose and Audience:

The purpose of this Operational Memo is to inform county departments of human/social services (counties) on the use and disclosure of Medical Assistance program applicant and client (member) protected health information.

Background:

The Colorado Department of Health Care Policy and Financing (HCPF or the Department) is the single state agency responsible for the administration of the Medicaid program and the Children's Health Insurance Program. As a health care Payer, HCPF is a covered entity under the Health Insurance Portability and Accountability Act (HIPAA). As a covered entity, HCPF and its agents (including counties) are required to safeguard the privacy of Medical Assistance program applicant and client protected health information (PHI). County requirements are also reflected in 10 CCR

2505-5 1.020.5. Additional information is available in the Resources section at the end of this document.

Definitions:

Business Associate: A business associate creates, receives, maintains, or transmits protected health information on behalf of a covered entity. However, business associates do not include a "government agency, with respect to determining eligibility for, or enrollment in, a government health plan that provides public benefits and is administered by another government agency or collecting protected health information for such purposes." Therefore, a County Health or Human Services Department is not a business associate.

Covered Entity: A covered entity is obligated to safeguard the privacy of applicant and client Protected health Information. A covered entity includes health plans, healthcare clearinghouses, and healthcare providers. As the administrator of Health First Colorado and the Children's Health Insurance Program, the Department is a health plan and therefore a covered entity.

Protected Health Information (PHI): Protected Health Information is any health information that could allow an individual to be identified. PHI includes information created, received or maintained by the Counties that relates to the past, present, or future physical or mental health, or condition, or treatment of an individual, or the payment for health care to an individual, and that identifies the individual or can be used to identify the individual.

ePHI: PHI in an electronic format.

Information:

Under HIPAA, Counties are not business associates of the Department. Instead, Counties are agents who act on behalf of the Department, with respect to determining eligibility for, or enrollment in, the Medical Assistance programs supervised by HCPF. Because Counties are agents of HCPF, Counties must comply with the same HIPAA privacy and security requirements that bind the Department. See C.R.S. § 25.5-1-118.

Counties may also choose to act as contracted partners of the Department, performing duties outside of Medical Assistance eligibility, enrollment, and related activities. Examples of contracted partnerships include Single Entry Points and returned mail processing entities. In these cases, the county becomes a business associate of the Department with respect to the contracted activities. The Department is then

responsible for ensuring that the counties comply with HIPAA privacy and security requirements as business associates.

Data Ownership

Counties have no ownership rights with respect to the protected health information of Medical Assistance program applicants and enrollees (See CBMS Privacy and Security Manual, Part B-definition of CBMS and 10 CCR 2505-5 1.020.4.3)

Use and Disclosure of Protected Health Information in normal operations

Minimum Necessary

Counties, and their agents or subcontractors, shall only request, use and disclose the minimum amount of protected health information necessary to accomplish the purpose of the request, use or disclosure.

Permitted Uses

"Use" of PHI is the sharing, utilization, examination, or analysis of PHI within county departments of human/social services. Counties must limit the use PHI to the purposes of enrolling an individual in a Medical Assistance program, determining an individual's

eligibility for Medical Assistance program, hearing an appeal of eligibility determinations, and resolving overpayments.

Permitted Disclosures

"Disclosure" of PHI is the release, transfer, or sharing of such information outside of a County Department of Social/Human Services, unless transmitting data to HCPF. Counties may disclose protected health information:

- (i) for determining an individual's eligibility for, or enrollment in, a Medical Assistance program; hearing an appeal of eligibility determinations; and resolving overpayments;
- (ii) for the proper management and administration of a County;
- (iii) as required by law;
- (iv) for data aggregation purposes for the health care operations of the Department, as determined by the Department.

If a County receives a request for release of PHI (from a client or from another entity) for purposes not directly related to Medicaid eligibility or enrollment, the County must refer the request to the Department at HCPF_Privacy@state.co.us and CC: HCPF_CountyRelations@state.co.us.

Disclosing PHI/PII for Immigration Purposes

When acting as an agent of the Department, Counties are prohibited from sharing or disclosing PHI or PII (Personal Identifiable Information) obtained from Department systems or databases for use in federal immigration enforcement actions.

Per C.R.S. Section 24-74-103, A state agency employee (and its agents) is prohibited from disclosing or making accessible PII that is not available to the public for the purpose of investigating for, participating in, cooperating with, or assisting in federal immigration enforcement, except as required by federal or state law or as required to comply with a court-issued subpoena, warrant, or order

Member Access to PHI

Applicants and members have a HIPAA right to access their own PHI at any time upon request. If a client submits an Access to PHI form to the Department, or the

Department receives a subpoena request or request from an attorney or other client representative, the Department will work closely with the County to provide access.

Safeguarding PHI

Appropriate Safeguards

Counties are obligated to implement appropriate safeguards in order to prevent the intentional or unintentional use or disclosure of PHI other than as permitted by HIPAA and the Department. Counties must maintain a comprehensive set of written privacy and security policies and procedures that include administrative, technical and physical safeguards. Safeguard policies and procedures should include, but are not limited to, the following: no unauthorized persons have access to PHI, desktops free of PHI if possible, files stored in locked cabinets, documents with PHI not being left on printers or fax machines, limited emailing of PHI outside a County, encrypting emailed PHI, and compliant shredding of paper PHI after use.

Safeguards for Storage and Transmission

Counties are obligated to maintain and ensure the confidentiality, privacy and security of any protected health information being transmitted in any format. All emails containing PHI or PII shall be sent using HIPAA-compliant encryption. (NOTE: Emails shall not contain PHI/PII in the subject line. Subject lines are often not encrypted, even when using HIPAA-compliant encryption.) When a County sends ePHI outside the county on an encrypted device, the key to decrypt shall be provided to the recipient separately from the device.

Reporting of Breach or Unauthorized Use or Disclosure

Counties shall report any suspected or actual breach of privacy or security, or unauthorized use or disclosure of PII/PHI to the HCPF County Relations team ([County Relations webform](#) or HCPF_CountyRelations@state.co.us) within three (3) business days of discovering the incident. The Department will provide instruction to the county and may seek additional information. The county shall investigate and respond to the Department within five (5) business days of receiving the Department's instructions and questions. The county shall also take all necessary action to address the breach or

unauthorized use or disclosure. The Department's Privacy Officer will be responsible for reporting HIPAA reportable breaches to the Secretary of Health and Human Services.

Tracking Disclosures

Accounting of Disclosures

Counties agree to implement a process that allows for disclosure information to be collected and maintained by the County and its subcontractors for at least six (6) years after disclosure. At a minimum, such information shall include:

- (i) the date of disclosure;
- (ii) the name of the entity or person who received PII/PHI;
- (iii) if known, the address of the entity or person;
- (iv) a brief description of PII/PHI disclosed; and
- (v) a brief statement of the purpose of the disclosure.

Counties do not need to provide any information concerning disclosures made:

- (i) to carry out treatment, payment or health care operations;
- (ii) to the client;
- (iii) pursuant to a client authorization;

Retention of PHI for Disclosure Records

Counties, and their subcontractors or agents, shall retain all required protected health information for a period of at least six (6) years after disclosure.

Member Requests for Accounting of Disclosures

A client has the right to request a full accounting of how a County, acting as the agent of the Department, has disclosed their PHI. If a request for an Accounting of Disclosures is delivered directly to a County, or its agents or subcontractors, the County must forward the request to the HCPF County Relations team ([County Relations webform](#) or HCPF_CountyRelations@state.co.us) in writing within five (5) business days of the receipt of the request. It is the Department's responsibility to prepare and deliver an accounting of disclosures. If the Department receives a request for an accounting of

disclosures, the Department will notify the County to gather needed information. The County and their agents or subcontractors must provide this information to the Department within ten (10) business days' notice by the Department of the request.

Department Access to Protected Health Information

HCPF Access to Protected Health Information

Counties will make protected health information available to the Department for inspection and copying within ten (10) business days of a request by the Department, to enable the Department to fulfill its obligations to permit access to client protected health information under the Privacy Rule.

Audits, Inspection, and Enforcement

Within ten (10) business days of a written request by the Department, Counties, and their agents or subcontractors, will allow the Department to conduct a reasonable inspection of the facilities, systems, books, records, agreements, and all policies and procedures relating to the use or disclosure of PII/PHI.

Counties and the Department shall agree in advance as to the scope, timing and location of such an inspection. The Department shall protect the confidentiality of all information provided.

Whether the Department inspects, or fails to inspect, County facilities, systems, books, records, agreements, and all policies and procedures, does not relieve Counties of their responsibility to comply with these requirements or the Privacy Rule.

Obligations with County Contractors, Vendors, and Subcontractors

County Contractors

If a County uses vendors (which can include subrecipients, contractors or subcontractors) to provide services, and those vendors receive or have access to PHI, each vendor shall sign an agreement with the County containing restrictions comparable to HIPAA use and disclosure of PHI and further identifying the Department

as a third-party beneficiary with rights of enforcement and indemnification from such contractors in the event of any violation of such contract or agreement.

All county vendors shall keep Department information strictly confidential.

Federal Access to Records

Governmental Access to Records

From time to time, the U.S. Department of Health and Human Services (HHS) may request access to records. If a County receives a request from HHS, the County shall notify the HCPF County Relations team ([County Relations webform](#) or HCPF_CountyRelations@state.co.us) within five (5) business days. If instructed by HCPF, the County shall make its internal practices, books, and records relating to the use and disclosure of protected health information available to HHS. The County shall also provide to HCPF a copy of any protected health information that the County provides to HHS.

Resources:

- [45 CFR §§160 and 164 of Health Insurance Portability and Accountability Act \(HIPAA\)](#)
- [Health Information Technology for Economic and Clinical Health \(HITECH\) Act](#)
- [SB 21-131](#) also known as CRS Section 24-74-101 et seq
- [Colorado Consumer Data Protection Law CRS § 24-73-101](#)

Attachment(s):

None

Department Contact:

[County Relations webform](#) or HCPF_CountyRelations@state.co.us