



OPERATIONAL MEMO

Title: HIPAA Requirements for County Departments of Human/Social Services	Topic: Administrative Policy
Audience: County Departments of Human Services	Sub-Topic: N/A
Supersedes Number: HCPF OM 23-026	Division: Partner Relations
Effective Date: July 1, 2025	Office: Policy, Communication & Administration
Expiration Date: June 30, 2027	Program Area: County Relations and Administration
Key Words: PHI, Protected Health Information, PII, Personally Identifiable Information, HIPAA, Health Insurance Portability and Accountability Act, Confidentiality	
Legal Authority: 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 and Colorado Consumer Data Protection Law CRS § 24-73-101	
Memo Author: Aric Bidwell	
Operational Memo Number: HCPF OM 25-049 Issue Date: July 1, 2025 Approved By: Josh Montoya	

HCPF Memo Series can be accessed online: <https://www.colorado.gov/hcpf/memo-series>

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 applicant and member (member) protected health information for Colorado's Medical Assistance Program and all state-funded health and medical care programs (collectively, "programs") administered by the Colorado Department of Health Care Policy and Financing.

Information:

A. Background:

The Colorado Department of Health Care Policy and Financing (HCPF or the Department) is the single state agency responsible for the administration of Colorado's 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 program applicant and member 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.

B. Information:

Under HIPAA, Counties are not business associates of the Department within their eligibility and enrollment roles. Instead, Counties are agents designated by state statute who act on behalf of the Department, with respect to determining eligibility for, or enrollment in, the programs. However, 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.

Separately, Counties may choose to act as contracted partners of the Department, performing duties outside of program eligibility, enrollment, and related activities. Examples of contracted partnerships include Case Management Agencies and returned mail processing centers. In these cases, the County becomes a business associate of the Department with respect to the contracted activities. In these contracted roles, Counties are directly responsible under federal law for complying with HIPAA privacy and security requirements as business associates.

1. 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). The Department is the data owner with respect to the data collected by Counties on behalf of the Department.

2. Use and disclosure of Protected Health Information in normal operations.

a. 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.

b. 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 of 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 program integrity activities.

c. 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 program and hearing an appeal of eligibility determinations;
- (ii) for the proper management and administration of a County;
- (iii) as required by law; and
- (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 member or from another individual or entity) for purposes not directly related to program eligibility or enrollment, the County must refer the request to the Department at HCPF_Privacy@state.co.us and must copy the County Relations team at HCPF_CountyRelations@state.co.us.

3. Member Access to PHI

Applicants and members have a HIPAA right to access their own PHI at any time upon request. If a member submits an Access to PHI form to the Department, or the Department receives a subpoena request or request from an attorney or other member representative, the Department will work closely with the County to provide access.

4. Safeguarding PHI

a. 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.

b. 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, except in situations where ADA accommodations are being made. (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.

5. 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.

6. Tracking Disclosures

a. 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 member;
- (iii) pursuant to a member authorization;

b. 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.

c. Member Requests for Accounting of Disclosures

A member 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.

C. 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.

D. Department Access to Protected Health Information:

1. HCPF access to PHI.

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 member protected health information under the Privacy Rule.

e. 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.

E. Obligations with County Contractors, Vendors, and Subcontractors

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.

Definition(s):

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 is not a business associate.

Covered Entity - A covered entity is obligated to safeguard the privacy of applicant and member Protected health Information. A covered entity includes health plans, healthcare clearinghouses, and healthcare providers. As a payer and the administrator of the programs, the Department is a covered entity.

Protected Health Information (PHI) - Protected Health Information is any health information that could allow a member or applicant 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. PHI includes information collected by Counties in program eligibility and enrollment work performed on behalf of the Department.

ePHI - PHI in an electronic format.

Action To Be Taken:

Counties are required to take action to ensure Protected Health Information (PHI) is safeguarded based on the requirements in 10 CCR 2505-5 1.020.6 and this Operational Memo.

Attachment(s):

None

HCPF Contact:

County Relations webform or HCPF_CountyRelations@state.co.us