



OPERATIONAL MEMO

Title: Government Disclosure Memo	Topic: Administrative Policy
Audience: County Departments of Human/Social Services, Medical Assistance Sites, Certified Application Assistance Site, Eligibility Application Partners	Sub-Topic: Administrative Policy
Supersedes Number: N/A	Division: Partner Relations and Administration
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Key Words: Federal Government, Immigration, PHI, PII, HIPAA, Confidentiality, Protected Health Information, Personally Identifiable Information, Health Insurance Portability and Accountability Act	
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	
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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 to other governmental entities.

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, who are designated as agents of the state) 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.

Information:

Governmental Access to Records

From time to time, the U.S. Department of Health and Human Services (HHS), as well as other federal or law enforcement agencies, may request access to records. If a County receives a request from a federal or law enforcement agency, the County shall notify the HCPF County Relations team ([County Relations webform](#) or HCPF_CountyRelations@state.co.us) within five (5) business days. If then 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.

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, as outlined in 10 C.C.R. 2505-5 § 1.020.3.2.a.v.B.ii.

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 Health or Human Services Department is not a business associate when performing eligibility and enrollment work.

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, local governments, 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.

Attachment(s):

None

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

HCPF Contact:

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