CalOHII
State of California
Office of Health
Information Integrity

STATE HEALTH INFORMATION GUIDANCE

SHARING BEHAVIORAL HEALTH INFORMATION IN CALIFORNIA

January 2018

CHHS
California Health & Human Services Agency

Table of Contents

Revision Log

Date	Revision Summary
January 2018	Updates to Scenarios 19 (page 127) and 21 (page 135), as well as Appendix 2 (page 152), to reflect new required language for re-disclosure of information due to the "Confidentiality of Substance Use Disorder Patient Records" (42 C.F.R. Part 2) final rule published January 3, 2018. Additionally updated the graphic (page 65) for Scenario 6 to reflect the "Yes" option on the flow.
December 2017	Updates to reflect feedback, recent legislation changes, and an updated legal review. Refer to What's New for details.
June 2017	Initial publication

What's New

The State Health Information Guidance (SHIG) was published in June 2017. While the California Office of Health Information Integrity (CalOHII) received positive responses following its publication, we also received constructive feedback and observations from our readers regarding opportunities to improve the clarity and accuracy of the guidance.

As a result, CalOHII updated the SHIG to address this feedback and incorporate recent legislative changes. In addition, we undertook a thorough state legal review and analysis. Our goal was to improve the clarity and ease of use for the SHIG reader.

We are pleased to issue this updated SHIG, which reflects the following revisions:

- Formatting for consistency across all sections to include standardized terms and citation references
- Moving the "Navigating SHIG" section to the top of the document to assist readers
- Updating all scenarios to provide greater clarity regarding state and federal regulations and statutes – we recommend that readers carefully review all scenarios
- Updating the "Summary Table of Key Laws" for ease of use
- Adding information to "Appendix 2 – Patient Authorization for Use or Disclosure" to assist the reader in understanding the requirements for authorization forms

The previous version of the SHIG should be discarded and replaced in full with this updated version. Note that this updated SHIG includes a date reference in the footer of all pages, ensuring readers/users are referencing the most current version.

We strongly encourage all users of the SHIG to read this version in its entirety and, as always, to consult with your legal counsel if you have questions.

Executive Summary

Health providers in California frequently express concern about the impact complex health information laws have on their practices and ability to provide integrated and coordinated care for patients. This is particularly true for the stringent federal and state laws that provide special protections for the privacy and confidentiality of mental health information and substance use disorder (SUD) patient-identifying information. The State of California developed this State Health Information Guidance (SHIG) document to help clarify federal and state laws (as of December 15, 2017) that impact disclosure and sharing of mental health and SUD patient-identifying information and records within California by providing scenario-based guidance in everyday business language. This guidance incorporates revisions to 42 Code of Federal Regulations (C.F.R.) Part 2 effective March 2017 and Lanterman-Petris-Short (LPS) Act effective January 2018.

The SHIG document provides the State of California's guidance in plain language about how mental health and SUD patient information can be shared in the day-to-day practice of providing patient-centered care. It is designed to clarify existing federal and state laws that impact disclosure and sharing of behavioral health[1] information within California by providing scenario-based guidance in everyday business language. The SHIG includes a variety of common scenarios to answer questions regarding when mental health and SUD patient-identifying information can be appropriately disclosed with and without patient authorization. This guidance will help achieve the objectives of the Institute for Healthcare Improvement's Triple Aim Initiative[2]: improve patient healthcare experience, improve the health of populations, and reduce the cost of healthcare.

The process of developing the SHIG involved extensive input from private and public healthcare entities. Stakeholders from more than 20 healthcare organizations served on the SHIG Advisory Group, identified common questions and concerns about sharing behavioral health information, and provided periodic feedback as the SHIG was developed. The scenarios included in the SHIG are based on questions and concerns identified by the stakeholders.

The guidance in this document involves five general principles the State of California considers foundational for sharing behavioral health information:

1. **Coordination of Care** - Behavioral health information should be shared to the extent allowed by federal and state law to address patient care needs involving medical, behavioral, and even socioeconomic issues.

[1] For purposes of this document, behavioral health is defined as encompassing both mental health and SUD patient-identifying information. This excludes psychotherapy notes.
[2] Institute for Healthcare Improvement, "Triple Aim Initiative," 2017, http://www.ihi.org/Engage/Initiatives/TripleAim/Pages/default.aspx

2. **Information Blocking -** Intentionally not sharing behavioral health information that can be legally and ethically shared to benefit the patient is strongly discouraged.
3. **Patient Access -** A patient generally has the right to inspect, review, and obtain copies of his or her behavioral health information, and a provider is responsible to enable such patient access.
4. **Patient Right to Be Informed -** A patient generally has the right to be informed of a provider's practices regarding uses and disclosures of his or her healthcare information.
5. **Patient Right to Authorize Disclosure of Healthcare Information -** A patient has the right to authorize disclosure of his or her behavioral health information.

Based on these principles and relevant federal and state law, the clarifying guidance in this document is organized to move from general to more specific guidance in three levels:

1. **General Guidance** to identify key federal and state laws regarding the disclosure of mental health patient information or SUD patient-identifying information, and help behavioral health providers determine whether and when they and their patients' information are regulated by the complex mental health and SUD laws.
2. **Guidance by Category** in six situational categories:
    a. Treatment and Coordination of Care
    b. Payment and Determination of Benefits
    c. Healthcare Operations
    d. Law Enforcement
    e. Public Safety and Public Health Policy
    f. Health Information Exchange
3. **Scenario-Based Guidance** to provide answers and clarifications to stakeholder-identified questions through flow-chart graphics and narrative responses in 22 scenarios.

Federal and state laws regarding the privacy of health information in general, and behavioral health information specifically, clearly allow health information to be shared for many purposes when a patient or patient's representative provides consent or authorization. Therefore, this behavioral health information guidance on exchange of patient information and records focuses on activities involving uses and disclosures of health information that do not require a valid authorization from the patient or their authorized representative.

While the guidance is designed to be helpful and authoritative, the SHIG is specifically not designed, nor does the State intend through its publication, to provide legal counsel applicable to all behavioral health circumstances. This guidance is for informational purposes only and should not be construed as legal advice or policy of the State of California. The State makes no warranties, expressed or implied, regarding errors or omissions and assumes no legal liability or responsibility for loss or damage resulting from the use of information contained within. Due to the complexity of laws related to mental health and SUD information and records, readers are

encouraged to consult an attorney prior to developing and implementing operational policies and procedures governing the use and disclosure of such patient information.

The SHIG is not intended as a comprehensive solution for all the associated legal, technological, operational, cultural, and financial issues associated with sharing mental health and SUD patient-identifying information. It is, however, intended to encourage the responsible and appropriate sharing of behavioral health information in California and promote a dialog among health providers and interested stakeholders regarding what disclosures and sharing can be done within current federal and state laws. Health providers, patient advocates, coordinators of care, concerned individuals, the courts, local governments, community health centers, state agencies, and the Legislature must collaborate and dialog with one another to fully achieve this document's purpose. To protect patients' rights while promoting whole-person care and better patient health outcomes through improved care coordination and information sharing, this dialog must continue well beyond the SHIG's publication.

The State encourages readers to use the SHIG to take appropriate next steps for their organizations to improve patients' healthcare experiences and health outcomes. Possible next steps for readers might include:

- Sharing the SHIG with appropriate staff and leaders within the readers' healthcare organizations
- Reviewing and possibly updating organization policies and procedures
- Working with local governments, other providers, and patients' groups to develop memoranda of understanding and data-sharing agreements for Whole Person Care pilots and other appropriate patient care efforts involving data sharing
- Actively engaging in industry discussions regarding Triple Aim Initiative objectives and how to best achieve them
- Identifying legislative changes that protect patient privacy while limiting obstacles for patient-centric integrated care

While designed to be helpful, the SHIG clarifications will lead to improvements for California health providers and patients only if there is meaningful follow-up action.

Navigating SHIG

This section is designed to orient the reader to the State Health Information Guidance (SHIG) document. It explains the imbedded hyperlinks, the structure of the guidance, and the approach to legal citations and references.

Definitions, Acronyms and Hyperlinks

Beginning with this section and throughout the rest of the SHIG, key words, phrases, and acronyms are underlined and in blue font the first time they are used in a section or scenario. As an example, note the formatting of health information. Words and phrases formatted in this way are hyperlinks to definitions presented in Appendix 4 - Definitions. All forms of a word are included under one definition (e.g., disclosure, disclose, and disclosures would all be listed under "disclose" in the definitions). If the reader is using an electronic version of the document, a click on the link will take the reader to the appropriate SHIG definition. Acronyms and the phrase each acronym represents are listed in Appendix 5 - Acronyms.

In addition to words, phrases and acronyms, the titles of specific sections of the SHIG (or of reference documents included in the appendices) may also have the same formatting and are also hyperlinks. A click on the link when using an electronic version of the SHIG will take the reader to the section of the document referenced. As examples, see the links to Appendix 4 - Definitions and Appendix 5 - Acronyms here and in the paragraph above.

Lastly, the Table of Contents is also a navigation tool. In electronic versions of the SHIG, the reader may click on a section defined in the Table of Contents and be taken to the beginning of the section selected.

Structure of Guidance

The guidance in this document is organized to move from general to more specific guidance:

- **General Guidance** – This is the most general information on overall healthcare and behavioral health information privacy laws.
- **Guidance by Category** – The design of each guidance by category section is to present with simplicity a few paragraphs of high-level guidance that apply to all the scenarios in a category. There may be exceptions to the high-level guidance and additional detail presented in the specific scenarios within the category. The behavioral health information guidance scenarios are presented in six categories:
    1. Treatment and Coordination of Care
    2. Payment and Determination of Benefits
    3. Healthcare Operations

4. Law Enforcement
5. Public Safety and Public Health Policy
6. Health Information Exchange

- **Scenario-Based Guidance** – This is guidance that addresses specific questions for each of the scenarios within a category. Each scenario answers a specific behavioral health information disclosure question raised by SHIG stakeholders. It is an illustrated questions and answers (Q&A) for common issues regarding disclosure of behavioral health information.

  The scenarios focus on the criteria for sharing information without a patient or patient's representative authorization. However, even when authorizations are not required by law, providers are encouraged to discuss with patients why some forms of sharing are in their patients' best interests. Informed disclosure decisions by patients are often strongly beneficial in engaging patients in their own healthcare.

  Each scenario has four parts:

  - a brief description of the scenario
  - a graphic illustrating the State's guidance for the scenario
  - a narrative describing the State's guidance specific to the scenario
  - a list of relevant legal citations and references

Role-Based Navigation

For the convenience of the reader, the table on the next page identifies the most common provider and healthcare industry roles included in the scenarios and which scenarios are relevant for each role. Readers viewing an electronic version of the document can click on the "X" within the table and jump to the appropriate scenario.

Table of Navigation Links to Scenarios by Role

	Scenario Name	MH	SUD	PH	SS	Emergency Personnel	Care Coord	LEO	HIE User	BA	Public Health
1	Behavioral Health (BH) to Physical Health (PH)	X	X	X							
2	PH to BH	X	X	X							
3	BH to Other BH	X	X								
4	BH to Social Services (SS)	X	X		X						
5	Mental Health (MH) to Caregiver	X					X				
6	Substance Use Disorder (SUD) to Caregiver		X				X				
7	To Improve Coordination of Care	X	X	X	X	X	X				X
8	In the Event of Emergency	X	X	X		X					
9	BH to SS for Determination of SS Benefits	X	X		X						
10	Quality Improvement	X	X	X						X	
11	Audits	X	X							X	
12	Business Associates (BA)	X	X							X	
13	BH Organization Policy and Strategy Development	X	X							X	
14	Law Enforcement Official (LEO) Requesting Information from SUD Treatment Facility		X					X			
15	LEO Requesting Information from MH Facility	X						X			
16	Patient Being Released from Involuntary Hospitalization	X						X			
17	Public Safety	X	X	X				X			
18	Public Health Policy Development	X	X								X
19	SUD Provider to Health Information Organization (HIO)		X						X		
20	MH Provider to HIO	X							X		
21	SUD Information from HIO to Health Information Exchange (HIE) User		X						X		
22	MH Information from HIO to HIE User	X							X		

Legal Caveat

The SHIG provides the State of California's non-mandatory guidance regarding disclosure of patient health information related to behavioral healthcare. It is designed to clarify existing state and federal laws that impact disclosure and sharing of behavioral health information within California by providing scenario-based guidance in everyday business language.

While the guidance is designed to be helpful and authoritative, the SHIG is specifically not designed, nor does the State intend through its publication, to provide legal counsel. This is for informational purposes only and should not be construed as legal advice or policy of the State of California. The California Office of Health Information Integrity (CalOHII) makes no warranties, expressed or implied, regarding errors or omissions and assumes no legal liability or responsibility for loss or damage resulting from the use of information contained within. Due to the complexity of laws related to patient mental health information and SUD patient-identifying information, readers are encouraged to consult legal counsel prior to developing and implementing operational policies and procedures governing the use and disclosure of such patient information.

The SHIG provides non-binding clarification to help readers working with behavioral health information better understand relevant sections of state and federal privacy laws including, but not limited to, the:

- Health Insurance Portability and Accountability Act (HIPAA)
- 42 Code of Federal Regulations (C.F.R.) Part 2 (as revised March 2017)
- Confidentiality of Medical Information Act (CMIA)
- Lanterman-Petris-Short (LPS) Act
- California Civil Code
- California Constitution, Article 1, Section 1
- California Health and Safety Code (HSC)
- California Welfare and Institutions Code (WIC)
- Patient Access to Health Records Act (PAHRA)

Purpose of SHIG

This State Health Information Guidance (SHIG) combines general guidance and field-based scenarios to clarify federal and state behavioral health laws related to sharing mental health information and substance use disorder (SUD) patient-identifying information. The SHIG offers authoritative guidance to provide legal clarification for sharing patient information while protecting patient privacy. Removing obstacles may result in increased coordination of care to help patients achieve better health outcomes, but coordination of care requires patient information to be shared in an appropriate, secure, and timely manner between different types of health providers.

This SHIG provides non-mandatory, authoritative guidance from the State of California on the uses, disclosures, and protection of patient information. This guidance document is not designed to address all behavioral health information sharing challenges that California providers currently experience. Rather, it clarifies California and federal laws and regulations for a non-legal audience. The clarifications help inform health providers and their support entities regarding when, why, and how mental health and SUD patient-identifying information may be shared among care partners.

Federal and state laws and regulations regarding the privacy of health information in general, and behavioral health information specifically; clearly allow patient-identifying information to be shared for a wide variety of purposes when a patient or patient's representative provides a valid authorization. Therefore, the SHIG focuses on exchange of patient information and records that do not require an authorization from the patient or the patient's representative.

The intended audience of the SHIG is private sector health providers, payers, vendors, healthcare associations, patient and privacy advocacy organizations, county governments, community health centers, and other interested parties. General guidance and field-based scenarios are employed in the SHIG as a means to clarify applicable privacy laws in the context of common obstacles and opportunities currently experienced by providers. Both general guidance and scenarios are used to clarify the State's interpretation of patient legal protections in lay language for a general and broad audience of stakeholders.

This guidance document is not a restatement of current laws. Instead, the SHIG is designed to clarify existing federal and state laws that impact disclosure and sharing of behavioral health information within California by providing scenario-based guidance in everyday business language.

Background of SHIG

The State Health Information Guidance (SHIG) project was developed by the California Office of Health Information Integrity (CalOHII) and funded by the California Health Care Foundation (CHCF). CalOHII and CHCF collaborated on this important initiative in order to clarify the federal and state laws that address how and when patient information related to mental health and substance use disorders (SUD) can be exchanged with or without express patient authorization between behavioral health providers and other providers involved in patient care.

CalOHII's primary mission is to assist State departments to protect and secure access to health information. CalOHII created this non-binding guidance because of its statutory authority to interpret and clarify state law, and because it produced the Statewide Health Information Policy Manual (SHIPM)[3]. The SHIPM provides similar mandatory guidance for California State departments covered by the Health Insurance Portability and Accountability Act (HIPAA). The SHIPM, originally published in 2015, is updated annually and in use today.

This SHIG was developed to promote greater care integration and coordination through secure information sharing between providers of mental health treatment, SUD treatment, and other healthcare. The goal of this document is to address stakeholder challenges in interpreting federal and state privacy laws protecting a patient's behavioral health information. Clarifying and providing the State's guidance regarding such laws will improve patient health, improve quality of care, and lower costs in California.

The process for developing the SHIG was initiated when CalOHII invited stakeholders from across the California healthcare industry to participate in the launch of the project in September 2016. Feedback was solicited about current obstacles to sharing behavioral health information. Below are samples of stakeholder comments at the meeting that reflect the wide range of perspectives the SHIG addresses:

- ✓ "The laws are nebulous on what can and can't be shared."
- ✓ "Top level funding through the State requires integrated sharing of patient information. On the other hand, we have a legal system saying you can't do that!"
- ✓ "Trust levels between providers, patients, payers, and vendors are low."
- ✓ "We are missing the patient's voice. The patients say they want providers to share information."

[3] The SHIPM can be found on the CalOHII website: http://www.chhs.ca.gov/OHII/Pages/SHIPM.aspx

Stakeholder recommendations for SHIG content and approach included:

- ✓ Stakeholders believe that data sharing is essential to achieving the Triple Aim Initiative[4] (better health, better care, lower costs) and supporting the shift toward holistic, proactive care that is central in current health reform efforts in California and nationally.
- ✓ Stakeholders hope that the SHIG will address key questions and gray areas that currently impede data sharing at both the practice and systems levels.
- ✓ Stakeholders recommended that the SHIG include real life examples of what is currently allowable when sharing behavioral health patient information.

Advisory Group members were selected from the more than 20 participating organizations to assist and provide feedback to the project. See Appendix 1 – SHIG Participants for a list of participants. CalOHII convened the first Advisory Group meeting in Sacramento in November 2016. The Advisory Group members developed almost 50 user stories based on their professional experiences with the issues, obstacles, and opportunities associated with sharing patient information and coordinating care. The user stories helped inform the development of field-based scenarios to clarify federal and state laws.

CalOHII sought additional input to guide the SHIG project by initiating discussions with a number of statewide and national advocacy organizations. A list of participants who provided additional input is included Appendix 1 – SHIG Participants of this document. Their comments included:

PATIENT RIGHTS AND PRIVACY

- ✓ "There is pressure to move sensitive patient information around the healthcare super highway."
- ✓ "The patient's dignity must be at the core of all decisions."
- ✓ "Can we really know what happens to the patient data after it has been shared?"

PATIENT ACCESS TO CARE

- ✓ "The caregiver's attempt to coordinate with physicians and law enforcement is hampered because of the lack of information sharing. The other entities are reluctant to share patient information with caregivers who are responsible for their daily care."
- ✓ "(Some) mental health providers are very resistant to share any information. In our opinion, they are sometimes not in alignment with the patient's rights."

[4] Institute for Healthcare Improvement, "Triple Aim Initiative," 2017, http://www.ihi.org/Engage/Initiatives/TripleAim/Pages/default.aspx

The SHIG was informed by the conclusions of two helpful publications (links to both are included in Appendix 3 – Additional Resources):

- ***Fine Print: Rules for Exchanging Behavioral Health Information in California in 2015***

  This thoughtful CHCF-sponsored white paper describes misconceptions about federal and state laws governing disclosure of behavioral health information and identified the need for State clarification to ease provider confusion as they interpret and apply privacy laws.

- ***Getting the Right Information to the Right Health Care Providers at the Right Time – A Road Map for States to Improve Health Information Flow between Providers***

  This National Governor's Association publication describes market and legal barriers that inhibit the exchange of patient health information and outlines approaches for states to provide better care coordination through patient information exchange, including publication of regulatory guidance. California Health and Human Services (CHHS) and CalOHII have taken the guidance approach through development of the SHIG.

To help meet the objective of clarifying statutes, regulations and laws relating to the sharing of mental health and SUD patient-identifying information, attorneys from the State and Advisory Group organizations reviewed draft content periodically throughout the development of the SHIG. They provided essential legal feedback at various review milestones and during the final review of the completed document.

Conclusion

One of the main objectives of the SHIG is to promote better care integration and better health outcomes for mental health and SUD patients while protecting their privacy. Through feedback received via its "grass roots" stakeholder engagement method, CalOHII believes the greatest value of the SHIG is its clarification of federal and state laws regarding exchange of mental health and SUD patient-identifying information by translating the complex laws into non-legal and non-technical language for a general audience. The intention is that clarity will lead to more integrated care and better whole person care outcomes.

General Guidance

The State of California encourages multi-disciplinary coordination of care for people receiving treatment and services in California. There is a growing consensus in the healthcare community that such integrated whole person care improves treatment outcomes, reduces inefficient use of healthcare resources, and increases patient satisfaction and safety.

At the same time, the State acknowledges the importance of protecting the privacy[5] of patients and the confidentiality of healthcare information. Many patients have needlessly experienced the pain of ostracization or discrimination due to the inappropriate disclosure of health information regarding their mental health or substance use disorder (SUD) treatments. Protecting patients from this type of violation of their privacy rights is the driving force behind the special regulatory protections for mental health and SUD patients' healthcare records and information[6].

A dynamic tension exists between the needs to effectively care for patients and to protect the behavioral health information from inappropriate disclosure. This tension led directly to the State's use of the principles articulated in the following section to develop this behavioral health information guidance.

Principles for Sharing Behavioral Health Information

The following general principles are considered foundational by the State of California for sharing behavioral health information and records.

1. Coordination of Care

Principle - Behavioral health information should be shared to the extent allowed by federal and state laws to address patient care needs involving medical, behavioral and even socioeconomic issues.

People with behavioral health needs frequently require treatment through a variety of professional disciplines. A multi-disciplinary approach may be required to fully address the patient's care needs. Such an approach (e.g., State of California Whole Person Care pilots[7]) is likely to require the exchange of legally permitted behavioral health information and such sharing is encouraged. The goal of this type of information exchange is to provide collaborative integrated care that leads to "improving the patient experience of care (including quality and

[5] Cal. Const. Art. 1, § 1.
[6] 42 C.F.R. § 2.2(b)(2).
[7] Authorized by the Medi-Cal 2020 Demonstration *[Cal. Welf. & Inst. Code § 14184.60(c)(5)*.]

satisfaction); improving the health of populations; and reducing the per capita cost of healthcare."[8]

2. Information Blocking

Principle – Intentionally not sharing behavioral health information that can be legally and ethically shared to benefit the patient is strongly discouraged.

Blocking exchange of, or choosing not to disclose information when doing so is clearly in the best interests of the patient and allowed by law is generally discouraged. Providers of behavioral healthcare services generally have a responsibility to develop a therapeutic relationship with a patient and that may appropriately lead to limiting the disclosure of patient information, such as information protected by the psychotherapist/patient privilege. Within the scope of this responsibility, however, providers are encouraged to discuss with patients why some forms of sharing might be in the patients' best interests. Informed disclosure decisions by patients are often strongly beneficial. If the sharing of patient information is legally permissible, beneficial to, and unopposed by the patient, blocking such disclosures for purposes of a provider's financial gain, leverage in negotiations, or to otherwise achieve competitive advantage in the healthcare marketplace is inappropriate and increases the risk of unethically elevating the provider's interests above the best interests of the patient.

3. Patient Access

Principle – A patient generally has the right to inspect, review, and obtain copies of his or her behavioral health information, and a provider is responsible to enable such patient access.

A patient's right to be informed generally holds whether the healthcare information is held by mental health providers, SUD treatment providers, or other covered entities and business associates regulated by the Health Insurance Portability and Accountability Act (HIPAA) and Patient Access to Health Records Act (PAHRA). In certain circumstances involving behavioral health records, however, access to information may be denied after review by a licensed healthcare professional. An example of such an appropriate denial of access would be if the requested access is likely to endanger the life or physical safety of the patient or another person.

4. Patient Right to Be Informed

Principle – A patient generally has the right to be informed of a provider's practices regarding uses and disclosures of his or her healthcare information.

[8] Institute for Healthcare Improvement, "Triple Aim Initiative," 2017, http://www.ihi.org/Engage/Initiatives/TripleAim/Pages/default.aspx

A patient has a general right to receive notifications regarding how a health provider or organization plans to use and disclose patient health information, even when not specifically addressed in state laws. HIPAA privacy regulations provide guidance on how to accomplish this, including through the Notice of Privacy Practices.

5. Patient Right to Authorize Disclosure of Healthcare Information

Principle – A patient has the right to authorize disclosure of his or her behavioral health information.

An adult patient generally may provide permission for a health provider or organization to share his or her personal healthcare information, including behavioral health records, for a wide variety of purposes. When in the best interests of the patient and allowed by law, the State strongly encourages the exchange or disclosure of information. Even when federal and state statutes and regulations prohibit disclosure of health information unless authorized, behavioral health providers are encouraged to discuss with patients why authorizing a disclosure or the sharing of information may be in the patients' best interests. Examples might include situations where a patient can authorize disclosure and sharing of information to encourage collaboration and integrated care between SUD treatment programs, behavioral health providers, physical health entities, and providers of social services.[9]

Introduction to Behavioral Health Information Guidance

The State believes appropriate exchange of behavioral health information can be achieved to effectively provide a patient with coordinated and integrated care while still protecting the patient's right to privacy. The State also understands many behavioral health providers choose not to share patient information that is legally permitted to be disclosed and exchanged due to the complexity and lack of clarity of current federal and state law and fear of non-compliance.

The purposes of this section are to:

1. Clarify how and when patient behavioral health information can be shared
2. Increase willingness to appropriately exchange patient information in the behavioral health professional community

For purposes of the State Health Information Guidance (SHIG), "behavioral health" is defined as the assessment, diagnosis, or treatment of:

- Mental Health
- Substance Use Disorders (SUD)

[9] Additional information regarding patient authorizations may be found in Appendix 2 – Patient Authorization for Use or Disclosure of this document.

The sharing of health information means the access to, use, disclosure and exchange of patient information and records between two or more individuals or organizations. There are five types of information that this document covers:

1. Information regulated by 42 Code of Federal Regulations (C.F.R.) Part 2 (as revised March 2017) – to be referred to as 42 C.F.R. Part 2 throughout this document
2. Information regulated by the HIPAA
3. Information regulated by the Lanterman-Petris-Short (LPS) Act
4. Information regulated by the Confidentiality of Medical Information Act (CMIA)
5. Information regulated by the Health and Safety Code (HSC), Chapter 12 – Registration of Narcotic, Alcohol, and Other Drug Programs (§ 11845.5)

Federal and state statutes and regulations regarding the privacy of medical information in general, and behavioral health specifically, clearly allow health information to be shared for many purposes when a patient or patient's representative provides a valid authorization. Therefore, this behavioral health information guidance on exchange of patient information and records will focus on activities involving uses and disclosures of health information that do not require an authorization from the patient or the patient's representative. Additional information regarding authorization may be found in Appendix 2 – Patient Authorization for Use or Disclosure of this document.

Generally Applicable Guidance

There are numerous federal and state regulatory factors to consider when sharing patient health information. The Guidance for Specific Scenarios section of this document provides guidance specific to the circumstances of each scenario. Some guidance, however, applies quite broadly to a variety of situations. The following five subsections provide broad guidance that generally applies to all the scenarios. Since these five areas of guidance apply broadly, the topics are not repeated in individual scenarios to avoid duplication for the reader.

Minimum Necessary

When health information is requested, used, or disclosed, steps must be taken to limit the information to only what is relevant and necessary to accomplish the intended purpose. HIPAA requires disclosure of health information to be limited to the minimum necessary in many circumstances. While the minimum necessary requirement only applies to HIPAA regulated health information, other laws operate in a similar way to limit disclosures. For example, disclosure of 42 C.F.R. Part 2 regulated SUD patient-identifying information must be limited to the information that is necessary to carry out the purpose of the disclosure. The minimum necessary requirement in HIPAA does not apply to the following exceptions; other laws do:

- Disclosures to or requests by a health provider for treatment purposes

- Disclosures made to the patient who is the subject of the record, when requested or required
- Uses or disclosures made pursuant to a valid patient authorization
- Disclosures to the Secretary of the U.S. Department of Health and Human Services
- Uses or disclosures required by state or federal law

[42 C.F.R. § 2.13(a), § 2.31(a)(5), § 2.51(a); 45 C.F.R. § 164.502(b); Cal. Civ. Code § 56.10(c)(2); Cal. Health & Safety Code §§ 11845.5(a) and (b); Cal. Welf. & Inst. Code § 5328(c).]

Documentation Requirements for Authorized Disclosures

Specific documentation must be created and maintained for disclosures of patient health information regulated by 42 C.F.R. Part 2 or LPS, even when authorized by the patient with a general designation. This section covers documenting disclosures that are in response to an authorization. Note that HIPAA does not require an accounting of disclosures that are pursuant to an authorization. For information about an accounting of disclosures as required by HIPAA, see 45 C.F.R. § 164.528.

Disclosures of SUD patient-identifying information made under the general designation must be documented. Upon patient request, the discloser of the information must provide a list of entities to whom the information was disclosed.

When LPS-regulated health information is shared for treatment and provision of services, the disclosure must be documented in the patient's medical record. The documentation must include the date, circumstance, names of recipient, relationship to patient, and what information was disclosed.

[42 C.F.R. § 2.13(d), § 2.31(a), § 2.51(c); Cal. Welf. & Inst. Code § 5328(a), § 5328.6.]

See Appendix 2 – Patient Authorization for Use or Disclosure for more detailed documentation requirements for authorized disclosures.

Re-Disclosure of 42 C.F.R. Part 2, CMIA, and LPS Patient Information

Health and SUD patient-identifying information regulated by 42 C.F.R. Part 2 or CMIA is specially protected and, once received, may only be re-disclosed under specific conditions. Patient information regulated by 42 C.F.R. Part 2 that identifies a patient directly or indirectly as having been diagnosed, treated, or referred for treatment for a SUD requires each disclosure be made with written consent from the patient or patient's representative unless disclosure meets an exception in the law. In addition, the recipient of the SUD patient-identifying information cannot further disclosure the information unless the further disclosure is expressly permitted by an authorization or as otherwise permitted by 42 C.F.R. Part 2.

While the LPS is silent on re-disclosure, the privacy protections contained within the LPS continue with the information even once the information has been disclosed. Further

disclosure of LPS-regulated information must meet an exception within the LPS or be with patient authorization.
[42 C.F.R. § 2.32; Cal. Civ. Code § 56.13; Cal. Welf. & Inst. § 5328; State Department of Public Health v. Superior Court (2015) 60 Cal.4th 940, 954.]

Psychotherapy Notes

While psychotherapy notes are referenced in HIPAA, they are not referenced in California law. Based on HIPAA, psychotherapy notes may generally not be released without patient authorization.
[45 C.F.R. § 164.501, § 164.508(a)(2).]

De-identified Information and Limited Data Set

To protect patient privacy while providing useful healthcare data, alternative approaches are permitted by current federal and state statutes and regulations. Alternative approaches include the use of de-identified information or a limited data set.

The HIPAA Privacy Rule specifies two methodologies to adequately de-identify health information:

1. A written determination by a qualified expert, or
2. The removal of specified individual identifiers as well as absence of actual knowledge by the covered entity that the remaining information could be used alone or in combination with other information to identify the individual

A covered entity meets the HIPAA de-identification standard by satisfying one of the two de-identification methodologies. De-identified health information created following one of these methods does not fall within the definition of health information.

Working with a limited data set rather than de-identified information may have more value to a HIPAA covered entity, depending on the intended use of the data. A limited data set is health information that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual:

- Names
- Street address
- Telephone and fax numbers
- Electronic mail addresses
- Social Security Numbers
- Medical record numbers
- Health plan beneficiary numbers
- Account numbers
- License / certification numbers
- Vehicle identifiers and serial numbers, including license plate numbers
- Device identifiers and serial numbers
- Web Universal Resource Locators (URLs)
- Internet Protocol (IP) addresses
- Biometric identifiers
- Full face photographic images

A covered entity may use or disclose a limited data set for the purposes of public health, research, or healthcare operations if the covered entity enters into a data use agreement (DUA) with recipient of the limited data set.
[45 C.F.R. §§ 164.514(b) and (e).]

Summary of Primary Laws

Mental health information and SUD patient-identifying information are specially protected types of health information. There are a number of federal and state laws specifically pertaining to these types of health information.

The primary federal regulations affecting the uses and disclosures of behavioral health information include:

- 42 C.F.R. Part 2 (as revised March 2017)
- Parts 160 through 164 of 45 C.F.R. – HIPAA

The primary State of California statutes pertaining to the uses and disclosures of behavioral health information include:

- Civil Code sections 56 et seq. - CMIA
- Welfare and Institutions Code (WIC) various sections, including LPS at sections 5328 et seq.
- HSC including sections 1280.18, 11845.5, 123110, and 123115

Following is the State's interpretation of these regulations and laws related to the access, use and disclosure of behavioral health patient information. The Guidance for Specific Scenarios section provides additional details and examples.

General Health Information Privacy and Security Laws

Federal

HIPAA Privacy Rule (45 C.F.R. § 164.500 et seq.)

The HIPAA Privacy Rule establishes national standards to protect patients' medical records and other patient-identifying health information and applies to health plans, healthcare clearinghouses, and those health providers that conduct certain healthcare transactions electronically. The Privacy Rule requires appropriate safeguards to protect the privacy of patient-identifying health information, and sets limits and conditions on the uses and disclosures of such information without patient authorization. Generally, exceptions are allowed for treatment, payment and healthcare operations. The Privacy Rule also gives

patients' rights over their health information, including rights to access and to request corrections.

HIPAA Security Rule (45 C.F.R. § 164.300 et seq.)

The HIPAA Security Rule establishes national standards to protect individuals' electronic patient-identifying information that is created, received, used, or maintained by a covered entity or its business associate(s). The Security Rule requires appropriate administrative, physical, and technical safeguards to ensure the confidentiality, integrity, and availability of electronic health information.

State of California Statutes

CMIA – Cal. Civ. Code § 56 et seq.[10]

This law protects the privacy of medical information by limiting disclosures by health providers, health plans, and contractors. Disclosure of limited health information including location, general condition or death may be released to family members, other relatives, domestic partners, close personal friend or other person identified by the patient.

HSC § 1280.18

This law requires health providers to establish and implement administrative, technical, and physical safeguards to protect the privacy of patient's medical information. Every health provider shall reasonably safeguard confidential health information from any unauthorized access, use, or disclosure.

Mental Health Information Privacy Laws

State of California

LPS – Cal. Welf. & Inst. Code § 5328 et seq.

Information and records obtained in the course of providing services to involuntarily and some voluntary recipients of services are confidential and specially protected under LPS. Patient information obtained by county or city mental health departments, state hospitals, regional centers (under contract with the California Department of Developmental Services), or other public or private entities (such as community mental health clinics) are also protected under LPS. In general, information and records may be disclosed as provided in LPS. The CMIA regulates most of what is not regulated by LPS. If a facility is not regulated by LPS, it is likely regulated by CMIA.

[10] Note, while CMIA covers privacy of most health information, it does not cover all. Health information covered by LPS, 42 C.F.R. Part 2, and Cal. Health & Safety § 11845 are not covered by CMIA.

Substance Use Disorder Information Privacy Laws

Federal

42 C.F.R. Part 2

42 C.F.R. Part 2 applies to federally assisted SUD treatment programs that meet the definition of a program. These regulations apply to information that would identify a patient as having a SUD and allow very limited disclosures of information without patient authorization.

State of California

HSC § 11845.5

This statute protects information and records maintained by entities that are licensed by the California Department of Health Care Services (DHCS) in connection with SUD diagnosis and treatment is confidential and specially protected under this code section. Information and records may be disclosed only as provided in this code section. CMIA does not regulate these SUD information and records.

Who is Subject to 42 C.F.R. Part 2 - Confidentiality of SUD Patient Records?

In order to be subject to 42 C.F.R. Part 2 an entity or provider must be both federally assisted and meet the definition of a 'program.' The provider is a 'program' if it promotes itself as offering SUD services and provides or makes referrals for SUD services.

For-profit programs and private practicioners who only accept private insurance or self-pay patients are not subject to 42 C.F.R. Part 2 regulations except when licensed by the State of California as described in the next paragraph.

In California under Section 10568(c) of Title 9 of the California Code of Regulations, all information and records obtained from or regarding residents in Residential or Drug Abuse Recovery and Treatment facilities licensed by the DHCS shall be confidential and maintained in compliance with 42 C.F.R. Part 2.

Federally Qualified Health Centers (FQHC) licensed by the DHCS as an Alcoholism or Drug Abuse Recovery or Treatment Facility are also subject to 42 C.F.R. Part 2.

Am I Federally Assisted?

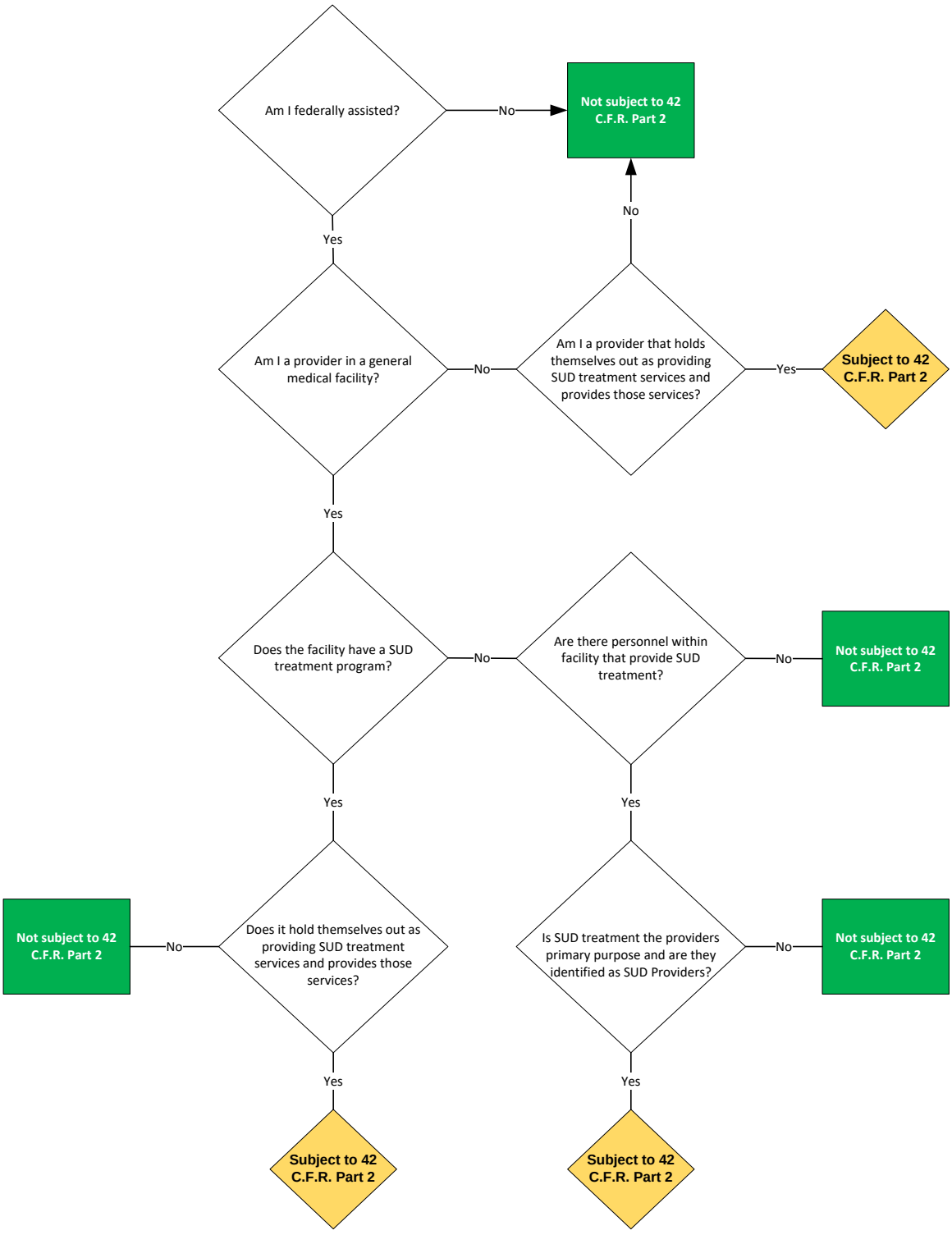
42 C.F.R. Part 2 regulations cover SUD treatment programs that are federally assisted in any of the following ways:

- The program is authorized to conduct business by any agency or department of the federal government of the United States.
- The program is licensed, certified, registered, or authorized by any department or agency of the United States including but not limited to:
    - Participating as a provider in the Medicare or Medicaid (Medi-Cal)[11] program;
    - Authorized to conduct maintenance treatment or withdrawal management; or
    - Registered with the Drug Enforcement Agency (DEA) to dispense a substance under the Controlled Substances Act to the extent the controlled substance is used in the treatment of SUD.
- The program is supported by funds provided by any agency or department of the United States by being:
    - A recipient of federal financial assistance in any form, including financial assistance which does not directly pay for the SUD diagnosis, treatment, or referral for treatment; or
    - Conducted by a state or local government unit through revenue sharing or other forms of assistance, receives federal funds which could be but not necessarily spent for the SUD treatment program.
- The program is assisted by the Internal Revenue Service (IRS) by being:
    - Allowed income tax deductions for contributions to the program; or
    - Granted tax exempt status.

[42 C.F.R. § 2.12(b).]

[11] Medi-Cal is the State of California's Medicaid program.

Am I a 'Program' Under 42 C.F.R. Part 2



Who is Subject to the Lanterman-Petris-Short Act?

The Lanterman-Petris-Short (LPS) Act provides guidelines for some voluntary admissions and all involuntary civil commitments of individuals to mental health facilities in the State of California. The Act was intended to protect the civil rights of individuals by eliminating the inappropriate and indefinite commitment of individuals "with mental health disorders, developmental disabilities, and chronic alcoholism."[12] The passing of LPS instituted legal safeguards on civil rights through judicial review. If the provider is subject to the LPS, it must comply with the Act's privacy protections. The table below is designed to help the reader determine if a provider is subject to LPS and if not, which law would apply.

Entity	Subject to LPS	Subject to CMIA
Do you treat behavioral health patients that have been committed involuntarily? *[Chapter 2 of Part 1 of Division 5 of the Cal. Welf. & Inst. Code.]*	Yes	
Are you a California Department of State Hospitals facility?	Yes	
Are you a community program (refer to your legal counsel)?	Yes	
Are you a community program? *[Cal. Welf. & Inst. Code §§ 4000-4390, §§ 6000-6008.]*	Yes	
Are you a county psychiatric unit, facility or hospital?	Yes	
Are you a mental health rehabilitation center? *[Cal. Welf. & Inst. Code § 5675.]*	Yes	
Are you a private institution, hospital, or clinic conducting care and treatment of persons who have mental illnesses or disorders?	Yes	
Are you a psychiatric health facility? *[Cal Health & Safety Code § 1250.2.]*	Yes	
Are you a skilled nursing facility with a special treatment program service unit for patients with chronic psychiatric impairments?	Yes	
Are you a private acute psychiatric hospital that treats patients who are voluntarily admitted?	Yes	
Are you a private general acute care hospital that treats patients who are voluntarily admitted to a designated psychiatric unit?	Yes	
Are you a private general acute care hospital treating voluntary patients in a treatment area not dedicated for mental health (e.g., general medical/surgical floor, obstetrics unit, pediatrics ward)?	No	Yes

[12] Cal. Welf. & Inst. Code § 5001.

Resolving Differences in Statutes and Regulations

There are situations when statutes and regulations differ in their requirements regarding when, where, and how disclosure of specially protected health information is allowed or required. In such cases, the SHIG presents a preemption analysis within the guidance. Generally, the statute or regulation providing greater protection of patients' health information or greater patient access to their own health information takes precedence.

Although there are exceptions, the Summary Table of Key Laws (below) illustrates at a high-level which law generally applies to which type of behavioral health information. Even if patient health information is not covered by the LPS or 42 C.F.R. Part 2, providers are still responsible for complying with HIPAA and either CMIA or HSC § 11845.5.

Summary Table of Key Laws

This section presents the State's general interpretation regarding the disclosure of behavioral health information for specific purposes. The following table that begins on the next page provides:

- Category/Purpose – The categories loosely tie to the Guidance for Specific Scenarios section and describes the high-level purpose of the disclosure or sharing of the information.
- Substance Use Disorder/Mental Health Patient-Identifying Information – These columns present the State's summary key healthcare privacy laws (along with legal references on which the State's guidance is based) that apply to substance use disorder and mental health information.

Note that the table summarizes what is stated in the key statutes and regulations for each category, and provides some considerations regarding preemption (meaning, which law takes priority). As part of the preemption considerations it refers to "listed above" – this phrase indicates the reader should reference information in the applicable Substance Use Disorder or Mental Health columns above the specific column's analysis. The results of the preemption analyses are presented in the more detailed State guidance provided in the Guidance for Specific Scenarios section.

Category/ Purpose	Substance Use Disorder Patient-Identifying Information			Mental Health Patient-Identifying Information		
	Regulated by 42 C.F.R. Part 2		Regulated by Cal. Health & Safety Code *(if licensed by Cal. DHCS)*	Regulated by Lanterman- Petris- Short (LPS) Act		Regulated by Cal. Civil Code (CMIA)
Health Care Operations	Without patient consent, certain administrative, financial, legal, and quality improvement activities of a covered entity that are necessary to run its business and to support the core functions of treatment and payment, are permitted. *42 C.F.R. § 2.12, § 2.53.*	AND	Without patient written consent, health information may be disclosed to qualified personnel for the purpose of: 1. management audits, 2. financial and compliance audits, or 3. program evaluation. *Cal. Health & Safety Code §§ 11845.5(c)(1) and (3).*	Without patient authorization, health information may be disclosed to a business associate or for health care operations purposes, in accordance with part 160 (commencing with § 160.101) and Part 164 (commencing with § 164.102) of Subchapter C of Subtitle A of Title 45 of the Code of Federal Regulations.[13] *Cal. Welf. & Inst. Code § 5328(a)(25).*	OR	Without a patient authorization, a health care provider or a health care service plan may disclose health information to a person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans. *Cal. Civ. Code §§ 56.10(c)(3), (4), and (16).*
	HIPAA: Without a patient authorization, certain administrative, financial, legal, and quality improvement activities of a covered entity that are necessary to run its business and to support the core functions of treatment and payment, are permitted. *45 C.F.R. § 164.501, § 164.506.* **Preemption consideration**: 42 C.F.R. Part 2 usually preempts the regulations listed above – although HIPAA still applies			**HIPAA:** Without a patient authorization, certain administrative, financial, legal, and quality improvement activities of a covered entity that are necessary to run its business and to support the core functions of treatment and payment, are permitted. *45 C.F.R. § 164.501, § 164.506.* **Preemption consideration:** HIPAA does not preempt the statutes listed above – but it does still apply		

[13] Effective January 1, 2018 - until that date, this type of sharing (per Cal. Welf. & Inst. Code, § 5328) is not lawful under California law.

Category/ Purpose	Substance Use Disorder Patient-Identifying Information			Mental Health Patient-Identifying Information		
	Regulated by 42 C.F.R. Part 2		Regulated by Cal. Health & Safety Code *(if licensed by Cal. DHCS)*	Regulated by Lanterman- Petris- Short (LPS) Act		Regulated by Cal. Civil Code (CMIA)
Inform (e.g., to inform family members of patient presence or status in a treatment facility)	The presence of a patient in a treatment facility may be disclosed when the facility is not publicly identified as only alcohol and substance abuse facility. *42 C.F.R. §§ 2.13(c)(1) and (c)(2).*	**AND**	Allowed with an authorization. *Cal. Health & Safety Code § 11845.5.*	If the patient is unable to authorize the release of information, only information confirming the patient's presence in the facility shall be provided upon request of a family member (spouse, parent, child, or sibling of a patient) - *paraphrased*. *Cal. Welf. & Inst. Code § 5328.1(a).*	**OR**	Disclosure of limited health information including location, general condition or death is permitted to a family member, other relative, domestic partner, close personal friend, or other person identified by the patient. *Cal. Civ. Code §§ 56.1007(a) and (b).*
	HIPAA: Disclosure of limited health information including location, general condition or death is permitted to a family member, other relative, domestic partner, close personal friend, or other person identified by the patient. *45 C.F.R. § 164.510(b).* **Preemption consideration:** HSC § 11845.5 usually preempts the regulations listed above – although HIPAA still applies.			**HIPAA:** Disclosure of limited health information including location, general condition or death is permitted to a family member, other relative, domestic partner, close personal friend, or other person identified by the patient. *45 C.F.R. § 164.510(b).* **Preemption consideration:** HIPAA usually preempts the regulations listed above.		

Category/ Purpose	Substance Use Disorder Patient-Identifying Information			Mental Health Patient-Identifying Information		
	Regulated by 42 C.F.R. Part 2		Regulated by Cal. Health & Safety Code *(if licensed by Cal. DHCS)*	Regulated by Lanterman- Petris- Short (LPS) Act		Regulated by Cal. Civil Code (CMIA)
Inform (e.g., to inform *non-family members* of patient activities in a 24-hour public or private treatment facility)	Presence of a patient in a treatment facility, when the facility is not publicly identified as only alcohol and substance abuse treatment facility/program, may be disclosed provided substance use disorder identifying patient information is not disclosed. *42 C.F.R. §§ 2.13(c)(1) and (c)(2).*	**AND**	Allowed with an authorization. *Cal. Health & Safety Code § 11845.5.*	The facility shall make reasonable attempts to notify the patient's next of kin or other person designated by the patient, of the patient's admission, release, transfer, serious illness, injury, or death only upon request of the family member, unless the patient requests that this information not be provided.[14] *Cal. Welf. & Inst. Code § 5328.1(b).*	**OR**	Disclosure of limited health information including location, general condition or death is permitted to a family member, other relative, domestic partner, close personal friend, or other person identified by the patient. *Cal. Civ. Code §§ 56.1007(a) and (b).*
	HIPAA: Disclosure of limited health information including location, general condition or death is permitted to a family member, other relative, domestic partner, close personal friend, or other person identified by the patient. *45 C.F.R. § 164.510(b).* **Preemption consideration:** HSC § 11845.5 usually preempts – although HIPAA still applies.			**HIPAA:** Disclosure of limited health information including location, general condition or death is permitted to a family member, other relative, domestic partner, close personal friend, or other person identified by the patient. *45 C.F.R. § 164.510(b).* **Preemption consideration:** HIPAA usually does not preempt the regulations listed above.		

[14] For 24-hour care facilities only.

Category/ Purpose	Substance Use Disorder Patient-Identifying Information			Mental Health Patient-Identifying Information		
	Regulated by 42 C.F.R. Part 2		Regulated by Cal. Health & Safety Code *(if licensed by Cal. DHCS)*	Regulated by Lanterman- Petris- Short (LPS) Act		Regulated by Cal. Civil Code (CMIA)
Inform (e.g., to inform the patient's attorney)	Presence of a patient in a treatment facility, when the facility is not publicly identified as only alcohol and substance abuse treatment facility/program, may be disclosed provided substance use disorder identifying patient information is not disclosed. *42 C.F.R. §§ 2.13(c)(1) and (c)(2).*	**AND**	Allowed with an authorization. *Cal. Health & Safety Code § 11845.5.*	The facility shall make reasonable attempts to notify the patient's next of kin or other person designated by the patient, of the patient's admission, release, transfer, serious illness, injury, or death only upon request of the family member, unless the patient requests that this information not be provided.[15] *Cal. Welf. & Inst. Code § 5328.1(b).*	**OR**	Disclosure of limited health information including location, general condition or death is permitted to a family member, other relative, domestic partner, close personal friend, or other person identified by the patient. *Cal. Civ. Code §§ 56.1007(a) and (b).*
	HIPAA: Disclosure of limited health information including location, general condition or death is permitted to a family member, other relative, domestic partner, close personal friend, or other person identified by the patient. *45 C.F.R. § 164.510(b).* **Preemption consideration:** HSC § 11845.5 usually preempts 42 C.F.R. Part 2; although HIPAA still applies.			**HIPAA:** Disclosure of limited health information including location, general condition or death is permitted to a family member, other relative, domestic partner, close personal friend, or other person identified by the patient. *45 C.F.R. § 164.510(b).* **Preemption consideration:** HIPAA preempts the regulations listed above.		

[15] For 24-hour care facilities only.

Category/ Purpose	Substance Use Disorder Patient-Identifying Information			Mental Health Patient-Identifying Information		
	Regulated by 42 C.F.R. Part 2		Regulated by Cal. Health & Safety Code *(if licensed by Cal. DHCS)*	Regulated by Lanterman- Petris- Short (LPS) Act		Regulated by Cal. Civil Code (CMIA)
Inform (e.g., to inform Law Enforcement)	Confirming the identify of a patient who is not or has never been a patient in a 42 C.F.R. Part 2 regulated facility while remaining silent on the identity of a current patient can inadvertently compromise patient privacy. It is best to neither confirm nor deny the presence of a patient. *42 C.F.R. §§ 2.12(c)(5) – (6), §§ 2.13(c)(1) – (2).*	**AND**	As long as the report of the crime on premises is done without revealing that the person is a patient for treatment. *Cal. Health & Safety Code § 11845.5(a), § 11845.5(c)(5).*	Without patient authorization, health information may be disclosed to the county behavioral health director or the director's designee, or to a law enforcement officer, or to the person designated by a law enforcement agency, pursuant to Sections 5152.1 and 5250.1.[16] *Cal. Welf. & Inst. Code § 5328(a)(16).*	**OR**	Behavioral health information may be shared with law enforcement as required by law. *Cal. Civ. Code § 56.10(b).*
	HIPAA: Mental/Behavioral health information may be shared with law enforcement as required by law. *45 C.F.R. §§ 164.512(a), (f)(5), and (6).* **Preemption consideration:** HIPAA usually does not preempt the regulations listed above.			**HIPAA:** Mental/Behavioral health information may be shared with law enforcement as required by law. *45 C.F.R. §§ 164.512(a), and (f)(5), and (6).* **Preemption consideration:** HIPAA usually does not preempt the regulations listed above.		

[16] Effective January 1, 2018 - until that date, this type of sharing (per Cal. Welf. & Inst. Code, § 5328) is not lawful under California law.

Category/ Purpose	Substance Use Disorder Patient-Identifying Information			Mental Health Patient-Identifying Information		
	Regulated by 42 C.F.R. Part 2		Regulated by Cal. Health & Safety Code *(if licensed by Cal. DHCS)*	Regulated by Lanterman- Petris- Short (LPS) Act		Regulated by Cal. Civil Code (CMIA)
Payment and Determination of Benefits (e.g., in support of a claim for payment, or application for services (including QSOs)	The records can be disclosed to qualified personnel when needed to provide services to the program for payment and determination of benefits, including a Qualified Service Organization. *42 C.F.R. § 2.11, §§ 2.12(c)(3) and (4), § 2.12 (d)(2).*	**AND**	In communications between qualified professional persons employed by the treatment or prevention program in the provision of service. *Cal. Health & Safety Code §§ 11845.5(c)(1), (3), and (4).*	Mental health information necessary to make a claim for aid, insurance or medical assistance may be disclosed. *Cal. Welf. & Inst. Code § 5328(c).*	**OR**	Behavioral health information may be used or disclosed, without a patient authorization, to facilitate payment and determination of benefits. *Cal. Civ. Code § 56.10(c).*
	HIPAA: Mental/Behavioral health information may be used or disclosed, without a patient authorization, to facilitate payment and determination of benefits. *45 C.F.R § 164.506.* **Preemption consideration:** HIPAA usually does not preempt the regulations listed above.			**HIPAA:** Mental/Behavioral health information may be used or disclosed, without a patient authorization, to facilitate payment and determination of benefits. *45 C.F.R § 164.506.* **Preemption consideration:** HIPAA usually does not preempt the regulations listed above		

Category/ Purpose	Substance Use Disorder Patient-Identifying Information			Mental Health Patient-Identifying Information		
	Regulated by 42 C.F.R. Part 2		Regulated by Cal. Health & Safety Code *(if licensed by Cal. DHCS)*	Regulated by Lanterman- Petris- Short (LPS) Act		Regulated by Cal. Civil Code (CMIA)
Research	The records can be disclosed to qualified personnel for scientific research, management audits, financial and compliance audits or program evaluation, as long as any report on such activities does not identify patient identities in any way. *42 C.F.R. § 2.52.*	**AND**	To qualified personnel for the purpose of conducting scientific research, management audits, financial and compliance audits, or program evaluation, but the personnel may not identify, directly or indirectly, any individual client in any report of the research, audit, or evaluation, or otherwise disclose patient identities in any manner. *Cal. Health & Safety Code § 11845.5(c)(3).*	Mental health information may be disclosed, as provided for in regulations adopted by the California Departments of Health Care Services, State Hospitals, Social Services or Developmental Services, specifying rules and necessary approvals for the conduct of research, and specifying confidentiality requirements for researchers (including all researchers sign an oath of confidentiality). *Cal. Welf. & Inst. Code § 5328(e), § 5329.*	**OR**	Mental/Behavioral health information may be shared for bona fide research purposes. However, no information may be further disclosed by the recipient in a way that would disclose the identity of a patient. *Cal. Civ. Code § 56.10(c)(7).*
	HIPAA: Mental/Behavioral health information may be used or disclosed for research as a limited data set that excludes direct identifiers, if the covered entity enters into a data use agreement with the limited data set recipient. *45 C.F.R. § 164.514(e).* **Preemption consideration:** HIPAA does not preempt the regulations listed above – but still applies.			**HIPAA:** Mental/Behavioral health information may be used or disclosed for research as a limited data set that excludes direct identifiers, if the covered entity enters into a data use agreement with the limited data set recipient. *45 C.F.R. § 164.514(e).* **Preemption consideration:** HIPAA does not preempt the regulations listed above – but still applies.		

Category/ Purpose	Substance Use Disorder Patient-Identifying Information			Mental Health Patient-Identifying Information		
	Regulated by 42 C.F.R. Part 2		Regulated by Cal. Health & Safety Code *(if licensed by Cal. DHCS)*	Regulated by Lanterman- Petris- Short (LPS) Act		Regulated by Cal. Civil Code (CMIA)
Treatment / Coordination of Care (e.g., for medical emergency)	Substance use disorder information may be disclosed without a patient authorization for the purpose of treating a medical emergency. *42 C.F.R. § 2.51.*	**AND**	To qualified medical persons not employed by the treatment program to the extent necessary to meet a bona fide medical emergency. *Cal. Health & Safety Code § 11845.5(c)(2).*	Mental health information may be shared for diagnosis and treatment. *Cal. Welf. & Inst. Code § 5328(a).*	**OR**	Behavioral health information may be used or disclosed, without a patient authorization, to facilitate treatment. *Cal. Civ. Code § 56.10(c)(1).*
	HIPAA: Mental/Behavioral health information may be used or disclosed, without a patient authorization, to facilitate treatment. *45 C.F.R. § 164.506(c)(4).* **Preemption consideration:** HIPAA does not preempt the regulations listed above – but still applies.			**HIPAA:** Mental/Behavioral health information may be used or disclosed, without a patient authorization, to facilitate treatment. *45 C.F.R. § 164.506(c)(4).* **Preemption consideration:** HIPAA does not preempt the regulations listed above – but still applies.		

Category/ Purpose	Substance Use Disorder Patient-Identifying Information			Mental Health Patient-Identifying Information		
	Regulated by 42 C.F.R. Part 2		Regulated by Cal. Health & Safety Code *(if licensed by Cal. DHCS)*	Regulated by Lanterman- Petris- Short (LPS) Act		Regulated by Cal. Civil Code (CMIA)
Treatment / Coordination of Care (e.g., treatment that is not a medical emergency)	Substance use disorder information can be disclosed to qualified personnel when needed for treatment, within a program. Communications between a program and an entity that has direct administrative control of the program for treatment may occur without authorization. *42 C.F.R. §§ 2.12(c)(3) and (d)(2).*	**AND**	In communications between qualified professional persons employed by the treatment or prevention program in the provision of service. *Cal. Health & Safety Code § 11845.5(c)(1).*	Qualified professional persons having responsibility for the patient's care whether internal or external to the facility may share the patient's mental health information to provide treatment or referral for treatment. *Cal. Welf. & Inst. Code § 5328(a).*	**OR**	Mental/Behavioral health information may be used or disclosed, without a patient authorization, to facilitate treatment. *Cal. Civ. Code § 56.10.*
	HIPAA: Mental/Behavioral health information may be used or disclosed, without a patient authorization, to facilitate treatment. *45 C.F.R. § 164.506(c)(4).* **Preemption consideration:** HIPAA does not preempt the regulations listed above – but still applies.			**HIPAA:** Mental/Behavioral health information may be used or disclosed, without a patient authorization, to facilitate treatment. *45 C.F.R. § 164.506(c)(4).* **Preemption consideration:** HIPAA does not preempt the regulations listed above – but still applies.		

Guidance for Specific Scenarios

Guidance for specific scenarios is based on scenario descriptions and assumptions. Readers should thoroughly review them, as the laws discussed in the guidance for an individual scenario will vary based on the specifics of the scenario's description and assumptions.

Each scenario contains the following subsections:

- Description – provides a brief description of the scenario, the question to be addressed by the scenario and assumptions made when developing the guidance
- Graphic(s) – presents one or more decision flow diagrams illustrating the State's guidance for the scenario
- Scenario Guidance – provides a narrative describing the State's guidance specific to the scenario
- Citations and Related Guidance – presents a list of the relevant legal citations and references used in developing the guidance

Treatment and Coordination of Care

Coordination of care involves planning and organizing a patient's treatment activities and sharing health information with providers for a patient's care to achieve improved health outcomes and more effective care. To effectively integrate and coordinate treatment and other care, patient information must be securely and appropriately shared by and between health providers, (e.g., physical health providers, substance use disorder (SUD) treatment providers, mental health providers) as well as various delivery systems (e.g. Federally Qualified Health Centers, county mental health programs). Health information can generally be shared for treatment and diagnosis purposes. While behavioral health information can be health information, other federal and state laws act to restrict disclosure of patient-identifying behavioral health information. The extent that behavioral health information can be shared for treatment and coordination of care is regulated by the Health Insurance Portability and Accountability Act (HIPAA), the California Confidentiality of Medical Information Act (CMIA), the Lanterman-Petris-Short (LPS) Act, California Health and Safety Code § 11845.5 (HSC § 11845.5), and 42 C.F.R. Part 2.

Scenario 1 - Behavioral Health to Physical Health

Description

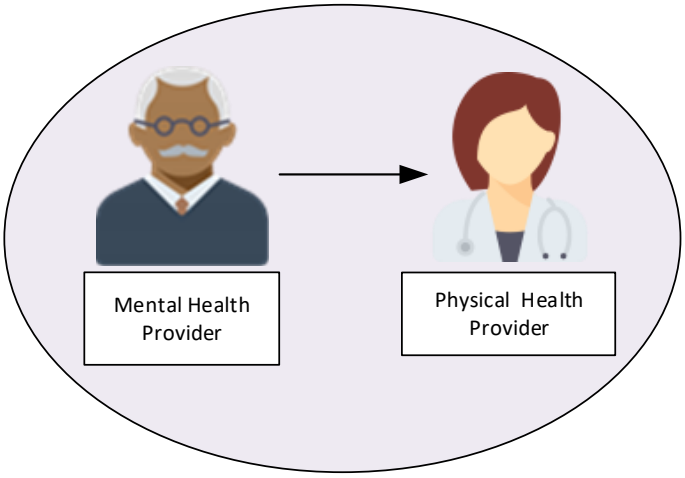
To provide effective treatment and coordinated care, a physical health provider needs patient health information from a behavioral health provider, such as substance use disorder (SUD) patient-identifying information or mental health information.

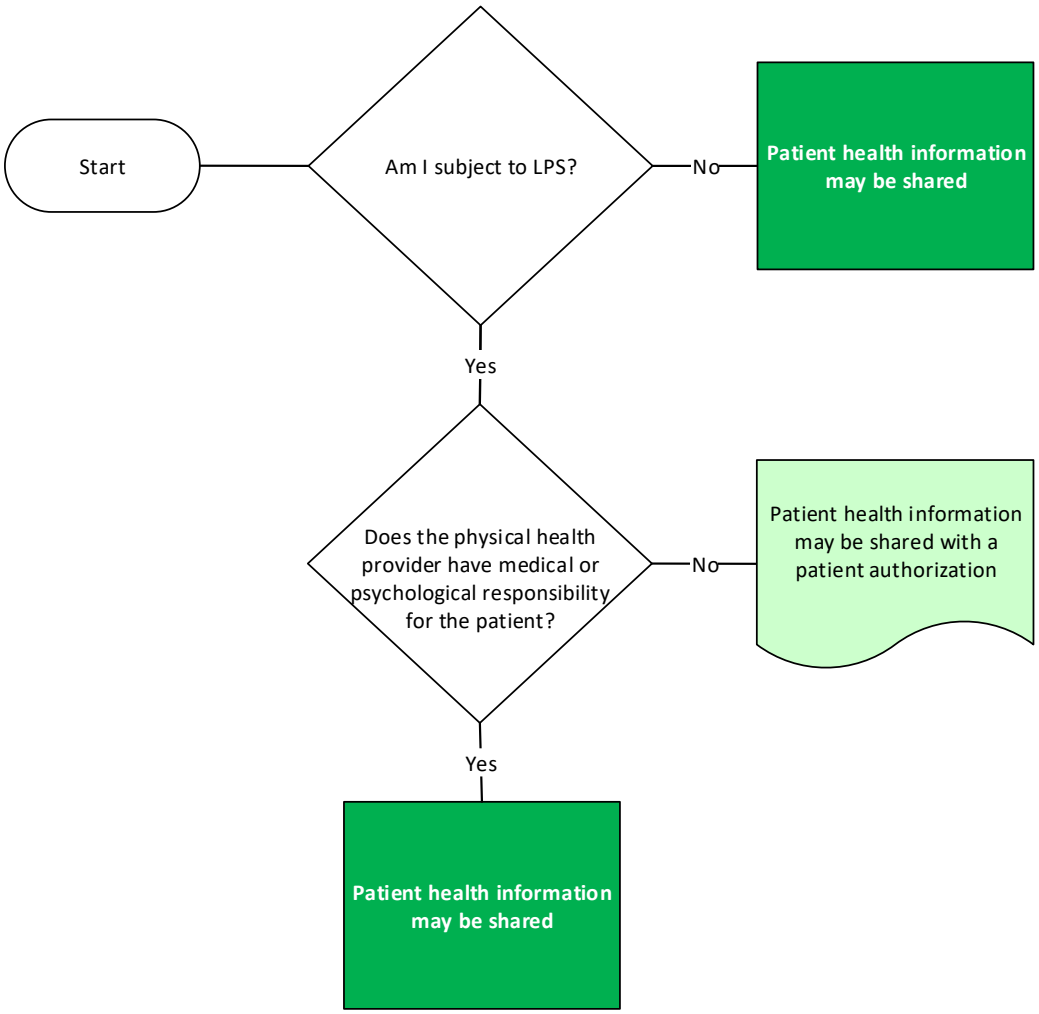
What patient health information can a behavioral health provider share with a physical health provider to provide treatment to the patient?

Important Scenario Guidance Assumptions:

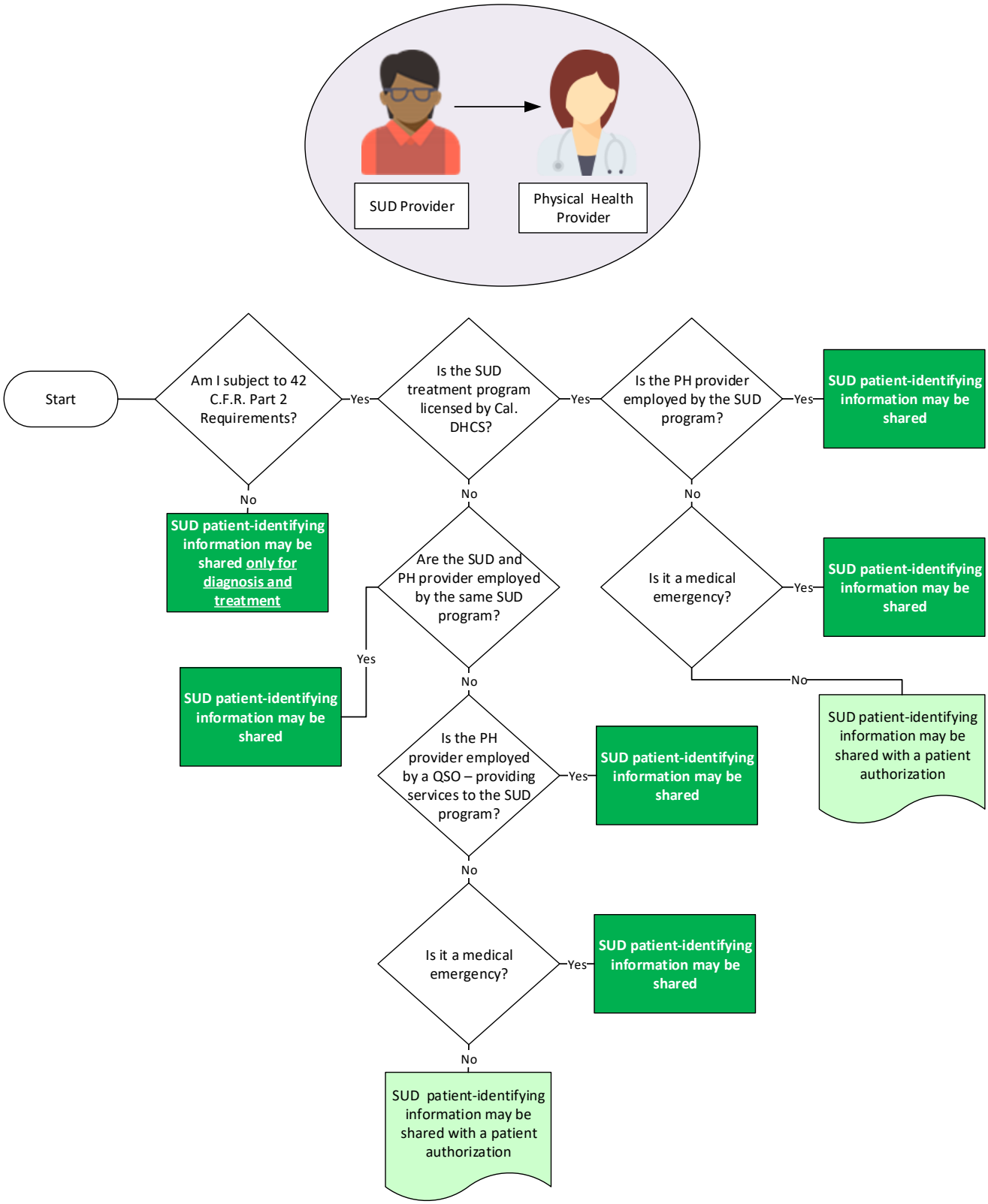
- Patient is an adult
- There is no patient or patient's representative authorization
- There is no medical emergency
- There is no court order

Graphic - Behavioral Health to Physical Health **- Mental Health**





***Graphic - Behavioral Health to Physical Health* - Substance Use Disorder**



Scenario Guidance - Behavioral Health to Physical Health

Health information can generally be shared for diagnosis and treatment purposes without a patient authorization. Health information includes mental health treatment, SUD treatment, and general medical information. The extent to which sharing of mental health and SUD treatment information is permitted without a patient authorization, however, depends on whether the provider is regulated by 42 C.F.R. Part 2 or California Health and Safety Code (HSC) & 11845.5 and therefore subject to stricter restrictions.
[45 C.F.R. § 164.506; Cal. Civ. Code § 56.10(c).]

A mental health provider may disclose Lanterman-Petris-Short (LPS)-regulated mental health information to a physical health provider without a patient authorization as long as the physical health provider has responsibility for the patient's medical or psychological care. The information may include prescribed psychotropic medications, diagnosis and treatment information, and programs/services utilized (such as discharge plans for the physical health provider). If the physical health provider does not have medical or psychiatric responsibilities for the patient, then LPS-regulated mental health information can be shared with a valid patient or patient's representative authorization.
[45 C.F.R. § 164.506; Cal. Welf. & Inst. Code §§ 5328(a) and (c).]

A SUD treatment provider may disclose patient demographics, diagnosis, prognosis, and treatment information without a patient authorization if one of the following conditions is met:

- When the patient health information is regulated by 42 C.F.R. Part 2 and HSC § 11845.5, the physical health provider may receive health information when:
    - The physical health provider is a treatment/prevention program professional *in the same facility/treatment program* as the SUD treatment provider, or
    - The patient's health information is needed to respond to a medical emergency (see Scenario 8 - In the Event of Emergency)
- When the patient health information is regulated by 42 C.F.R. Part 2 and the SUD treatment program is not licensed by California Department of Health Care Services (DHCS) (meaning, not regulated by HSC § 11845.5), the physical health provider may receive health information when the physical health provider is employed by a qualified service organization (QSO) that provides services to the SUD treatment program.

[42 C.F.R. § 2.12(c)(3), § 2.51(a); Cal. Health & Safety Code § 11845.5(c)(1); Cal. Welf. & Inst. Code §§ 5328(a) and (c).]

If none of the above conditions are met, then mental health/SUD patient-identifying information can be shared with a valid patient or patient's representative authorization.
[42 C.F.R. § 2.31; Cal. Welf. & Inst. Code §§ 5328(a) – (c).]

Citations and Related Guidance

- 42 C.F.R. § 2.12(c)(3).
- 42 C.F.R. § 2.31.
- 42 C.F.R. § 2.51(a).
- 45 C.F.R. § 164.506.
- Cal. Civ. Code § 56.10(c).
- Cal. Health & Safety Code § 11845.5(c)(1).
- Cal. Welf. & Inst. Code §§ 5328 (a) - (c).
- Appendix 2 - Patient Authorization for Use or Disclosure

Scenario 2 - Physical Health to Behavioral Health

Description

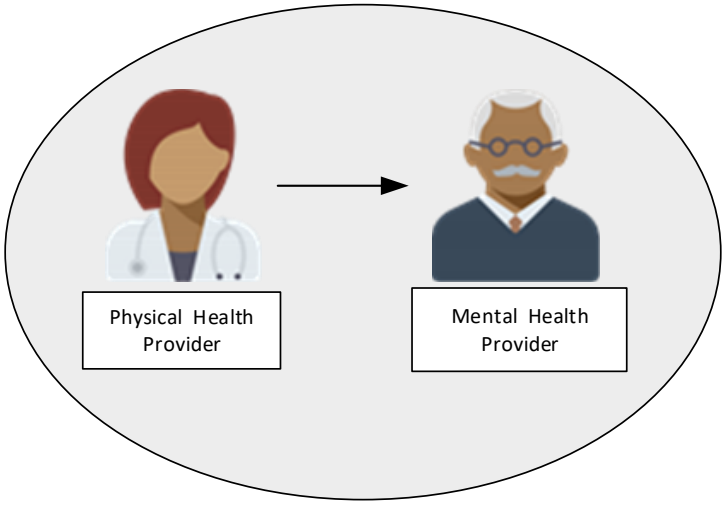
To provide effective treatment and coordinated care, a behavioral health provider needs patient information from a physical health provider, such as prescribed medications, known allergies, illnesses, or conditions that may negatively interact with psychotropic medications, treatments, and medications that are contraindicated, health information or substance use disorder (SUD) patient-identifying information.

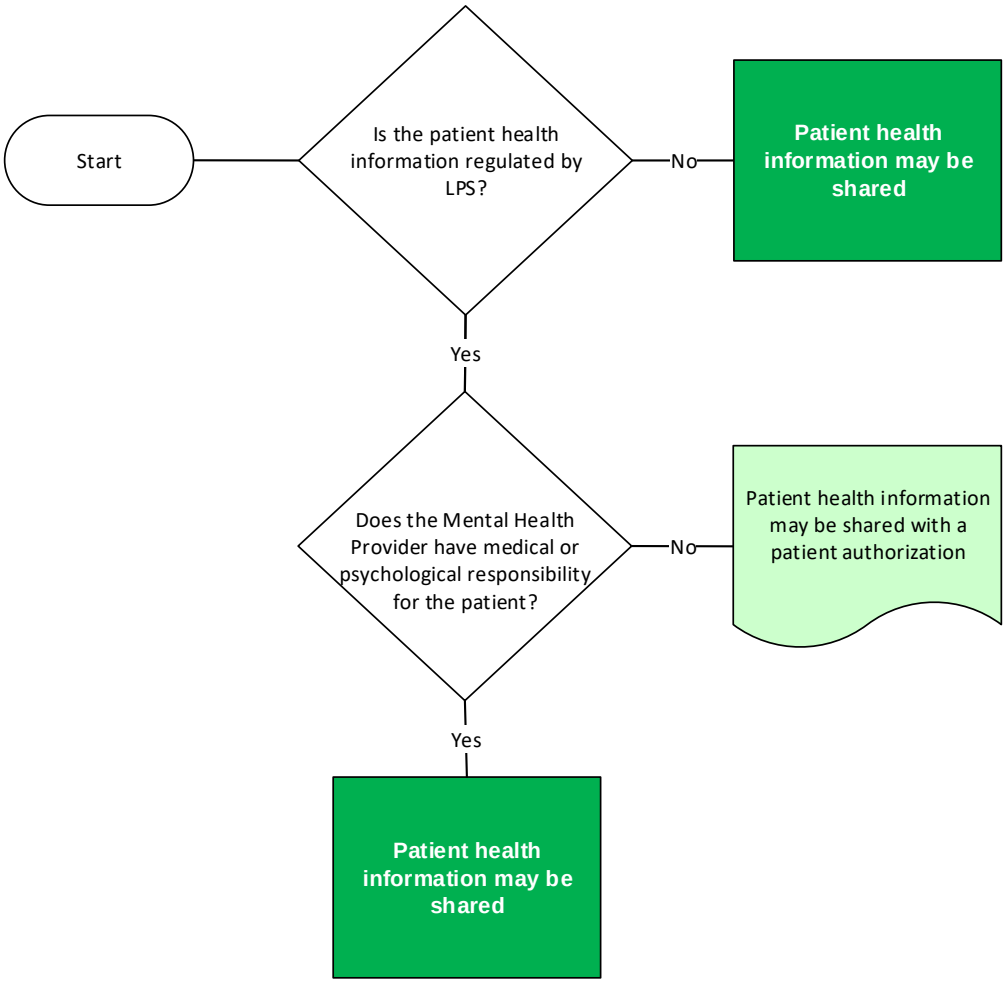
What patient health information can a physical health provider share with a behavioral health provider to provide treatment to the patient?

Important Scenario Guidance Assumptions:

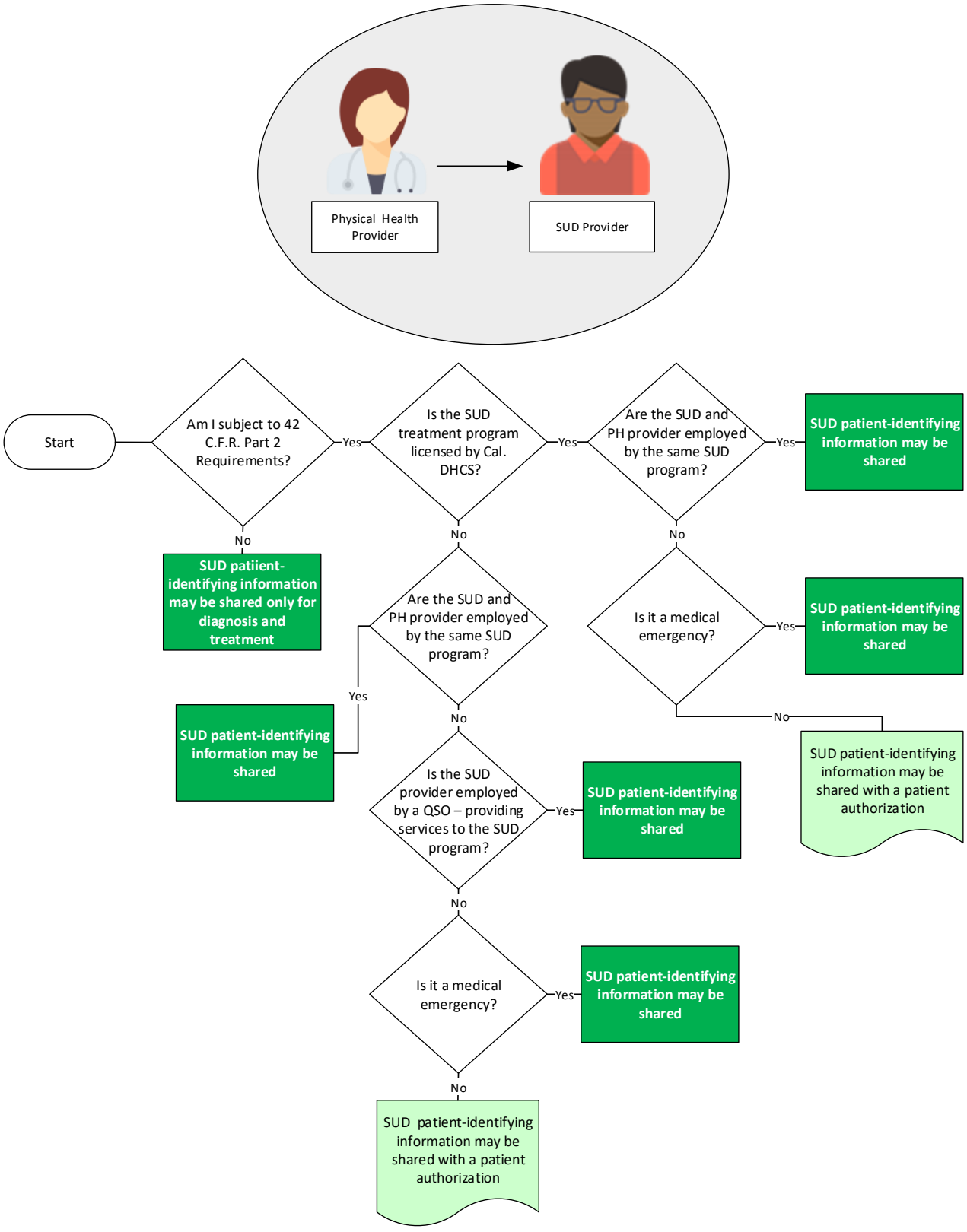
- Patient is an adult
- There is no patient or patient's representative authorization
- There is no medical emergency
- There is no court order

***Graphic - Physical Health to Behavioral Health* - Mental Health**





***Graphic - Physical Health to Behavioral Health* - Substance Use Disorder**



Scenario Guidance - Physical Health to Behavioral Health

Health information can generally be shared for treatment and diagnosis purposes without a patient authorization. Health information includes mental health treatment, SUD treatment, and general medical information. The extent to which sharing of mental health and SUD treatment information is permitted without a patient authorization, however, depends on whether the provider is regulated by 42 C.F.R. Part 2 and/or California Health and Safety Code (HSC) § 11845.5. SUD patient-identifying information protected by these laws is subject to stricter restrictions.

[45 C.F.R. § 164.506; Cal. Civ. Code § 56.10]

In general, a physical health provider may disclose Lanterman-Petris-Short (LPS)-regulated patient health information without a patient authorization to a behavioral health provider who has any responsibility for the patient's healthcare. The information may include any patient information, such as prescribed psychotropic medications, diagnosis and treatment information, and programs/services utilized if relevant to treatment. If the behavioral health provider does not have medical or psychological responsibility for the patient's care, LPS-regulated mental health information can be shared with a valid patient or patient's representative authorization.

[45 C.F.R. § 164.506; Cal. Welf. & Inst. Code §§ 5328(a) and (b).]

A physical health provider may disclose SUD patient demographics, diagnosis, prognosis, and treatment information without patient authorization if one of the following conditions is met:

- When the patient health information is regulated by 42 C.F.R. Part 2 and HSC § 11845.5, the SUD treatment provider may receive health information when:
    - The SUD treatment provider is an employee and is a treatment/prevention program professional *in the same facility/treatment program* as the physical health provider, or
    - The patient's health information is needed to respond to a medical emergency (see Scenario 8 - In the Event of Emergency)
- When the patient health information is regulated by 42 C.F.R. Part 2 and the physical health provider works for a program/facility that is not licensed by California Department of Health Care Services (DHCS) (meaning, not regulated by HSC § 11845.5), the SUD treatment provider may receive health information when the SUD treatment provider is employed by a qualified service organization (QSO) that provides services to the SUD treatment program

[42 C.F.R. § 2.12(c)(3), § 2.51(a); 45 C.F.R. § 164.506; Cal. Health & Safety Code §§ 11845.5(c)(1) and (2).]

If none of the above conditions are met, then mental health/SUD patient-identifying information can be shared with a valid patient or patient's representative authorization. *[42 C.F.R. § 2.12; Cal. Health & Safety Code § 11845.5.]*

Citations and Related Guidance

- 42 C.F.R. § 2.12.
- 42 C.F.R. § 2.12(c)(3).
- 42 C.F.R. § 2.51(a).
- 45 C.F.R. § 164.506.
- Cal. Civ. Code § 56.10.
- Cal. Health & Safety Code §§ 11845.5(c)(1) and (2).
- Cal. Welf. & Inst. Code §§ 5328(a) and (b).
- Appendix 2 - Patient Authorization for Use or Disclosure

Scenario 3 - Behavioral Health to Other Behavioral Health

Description

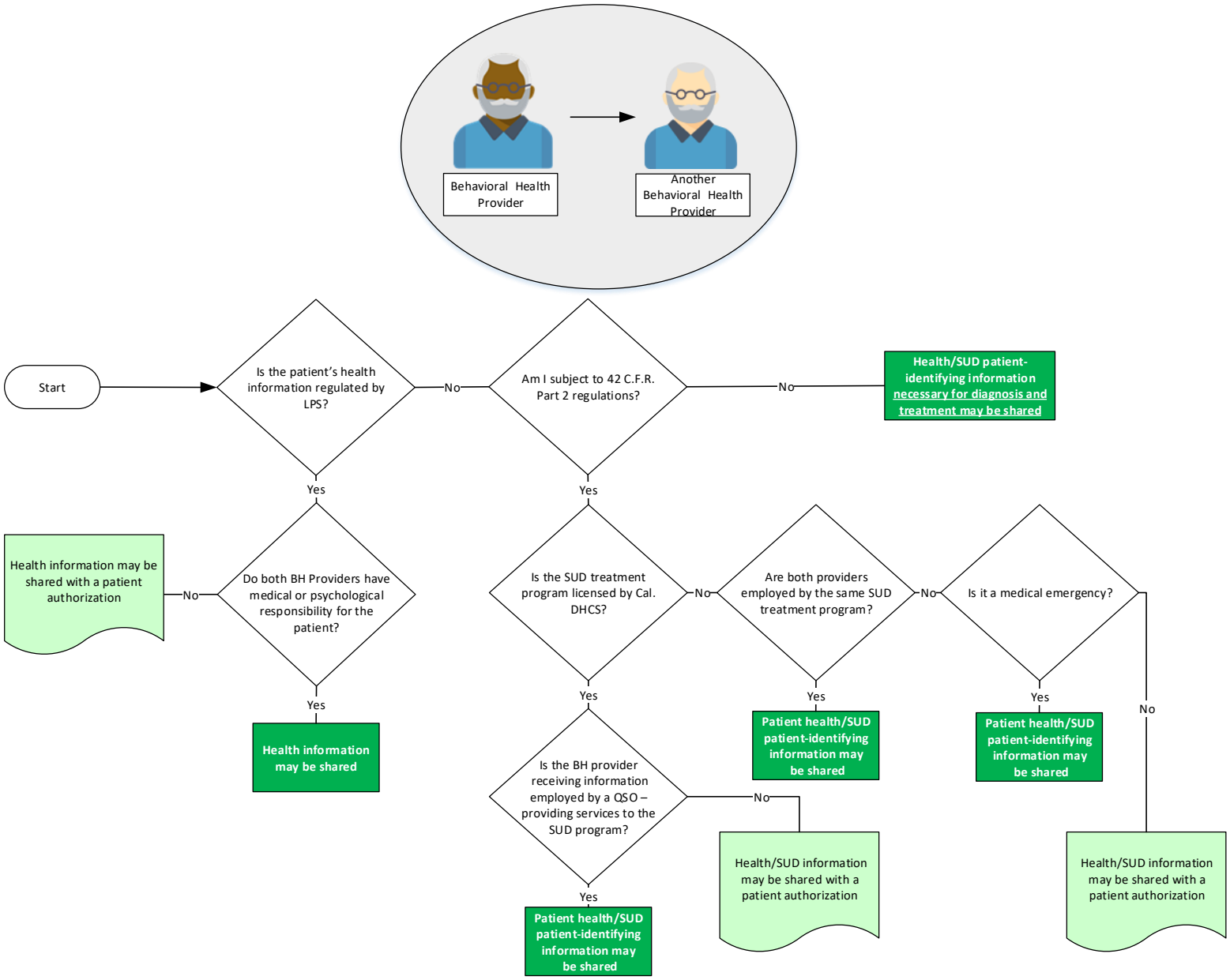
A behavioral health provider needs patient health information from a hospital to transition a patient to appropriate behavioral health providers upon discharge. Health information may include mental health or substance use disorder (SUD) patient-identifying information.

What patient health information can a behavioral health provider share with another behavioral health provider for transition and discharge planning?

Important Scenario Guidance Assumptions:

- Patient is an adult
- There is no patient or patient's representative authorization
- There is no medical emergency
- There is no court order

Graphic - Behavioral Health to Other Behavioral Health



Scenario Guidance – Behavioral Health to Other Behavioral Health

Health information can generally be shared for diagnosis and treatment purposes. Health information includes mental health treatment, SUD treatment, and general medical information. The extent to which sharing of mental health and SUD treatment information is permitted, however, depends on whether the provider is regulated by 42 C.F.R. Part 2 and/or California Health and Safety Code (HSC) § 11845.5. SUD patient-identifying information protected by these laws is subject to stricter restrictions.
[42 C.F.R. § 2.12(a)(1); 45 C.F.R. § 164.506; Cal. Civ. Code § 56.10(c); Cal. Health & Safety Code § 11845.5; Cal. Welf. & Inst. Code §§ 5328(a) and (c).]

Recognizing the importance of effective follow-up care, the State of California requires a written aftercare plan upon a patient's discharge from most inpatient mental health treatment. A mental health provider may disclose Lanterman-Petris-Short (LPS)-regulated mental health information to another behavioral health provider without a patient authorization as long as each provider has any responsibility for the patient's care. The information may include prescribed psychotropic medications, diagnosis and treatment information, and programs/services utilized (discharge plans for the physical health provider).
[45 C.F.R. § 164.506; Cal. Health & Safety Code § 1262; Cal. Welf. & Inst. Code §§ 5328(a) and (b), § 5768.5.]

A SUD treatment provider may disclose patient demographics, diagnosis, prognosis, and treatment information without a patient authorization if one of the following conditions is met:

- When the SUD patient-identifying health information is regulated by 42 C.F.R. Part 2 and HSC § 11845.5, the other behavioral health provider may receive health information when:
    - The other behavioral health provider is an employee and is a treatment/prevention program professional *in the same facility/treatment program* as the SUD treatment provider, or
    - The patient's health information is needed to respond to a medical emergency (see Scenario 8 - In the Event of Emergency)
- When the SUD patient-identifying health information is regulated by 42 C.F.R. Part 2 and the SUD treatment program is not licensed by California Department of Health Services (DHCS) (meaning, not regulated by HSC § 11845.5), the other behavioral health provider may receive health information when that provider is employed by a qualified service organization (QSO) that provides services to the SUD treatment program

[42 C.F.R. § 2.12(c)(3), § 2.51(a); 45 C.F.R. § 164.506; Cal. Health & Safety Code § 11845.5(c)(1).]

If none of the above conditions are met, then mental health/SUD patient-identifying information can be shared with a valid patient or patient's representative authorization. *[42 C.F.R. § 2.12.]*

Citations and Related Guidance

- 42 C.F.R. § 2.12(a)(1).
- 42 C.F.R. § 2.12(c)(3).
- 42 C.F.R. § 2.51(a).
- 45 C.F.R. § 164.506.
- Cal. Civ. Code § 56.10(c).
- Cal. Health & Safety Code § 1262.
- Cal. Health & Safety Code § 11845.5.
- Cal. Health & Safety Code § 11845.5(c)(1).
- Cal. Welf. & Inst. Code §§ 5328(a) - (c).
- Cal. Welf. & Inst. Code § 5768.5.
- Appendix 2 - Patient Authorization for Use or Disclosure

Scenario 4 - Behavioral Health to Social Services

Description

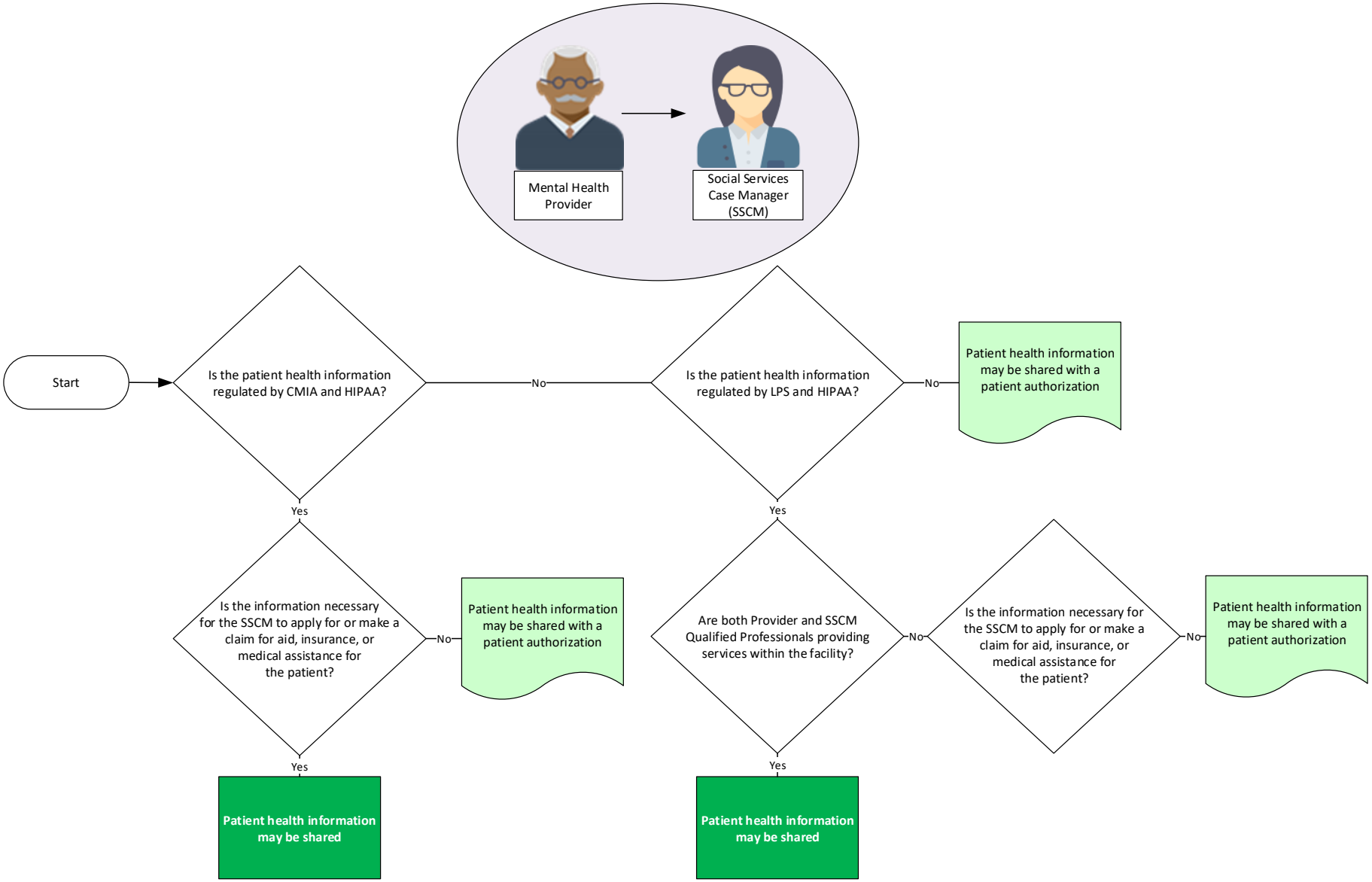
Social services organizations often serve individuals with mental health or substance use disorder (SUD) issues. For example, discharge planning, multi-disciplinary coordination of care, or applying for or making a claim for medical assistance or health benefits on behalf of a patient, a social services case manager (SSCM) may request a behavioral health provider to share patient health information. For purposes of this scenario, a SSCM is a licensed clinical social worker or other similar health provider.

What patient health information can a behavioral health provider share with a social services case manager?

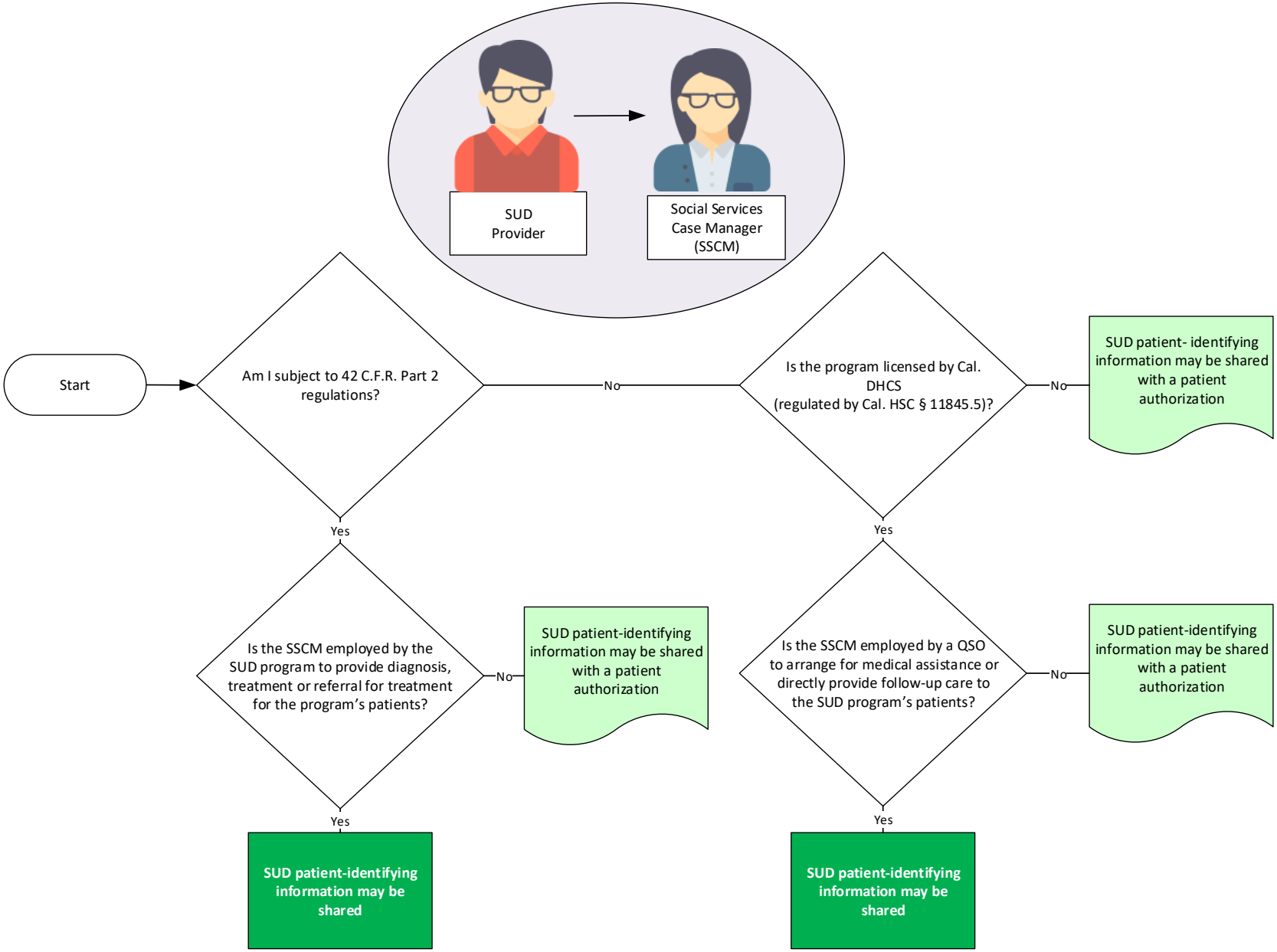
Important Scenario Guidance Assumptions:

- Patient is an adult
- There is no patient or patient's representative authorization
- There is no medical emergency
- There is no court order

***Graphic - Behavioral Health to Social Services* - Mental Health**



***Graphic - Behavioral Health to Social Services* - Substance Use Disorder**



Scenario Guidance - Behavioral Health to Social Services

The health information that may be disclosed by a behavioral health provider varies depending on whether the behavioral health information is regulated by the Lanterman–Petris–Short (LPS) Act, 42 C.F.R. Part 2, the Health Insurance Portability and Accountability Act (HIPAA), Health and Safety Code (HSC) § 11845.5, and/or the Confidentiality of Medical Information Act (CMIA).

For purposes such as discharge planning, multi-disciplinary coordination of care, or for applying for or making a claim for medical assistance or health benefits on behalf of a patient, behavioral health providers and SCCM or other health providers may have a need to share information for the benefit of the patient. If the purpose of sharing behavioral health information with a SSCM is specifically to make a claim for medical assistance or health benefits on behalf of the patient, the health information may be shared under the conditions described in the following paragraphs.

A mental health provider may disclose patient health information to a SSCM if any of the following criteria is met:

- When the patient health information is regulated by CMIA and HIPAA - the SSCM may receive mental health information to make a claim for medical assistance or health benefits on behalf of the patient.
  [45 C.F.R. § 164.506; Cal. Civ. Code § 56.10.]
- When the patient health information is regulated by LPS and HIPAA, the SCCM may receive mental health information when:
  - The SSCM receiving the information and mental health provider disclosing the information are qualified professional persons providing services within the same treatment facility, or
    [45 C.F.R. § 164.506; Cal. Welf. & Inst. Code § 5328(a).]
  - The SSCM receiving the information and mental health provider disclosing the information are qualified professional persons with responsibility for the patient's treatment external to the treatment facility.
    [45 C.F.R. § 164.506; Cal. Welf. & Inst. Code § 5328(a).]

If none of the above conditions are met, the mental health information can be shared with a SSCM with a valid patient or patient's representative authorization (e.g., to locate supportive housing in proximity to their client's healthcare access needs, or other non-medical social services).
[Cal. Welf. & Inst. Code § 5328.]

Substance use disorder (SUD) patient-identifying information is specially protected under federal and state law. Without patient authorization, disclosure is strictly regulated for any patient information that identifies an individual directly or indirectly as having a current or past drug or alcohol problem.

Despite the restrictions, a SUD treatment provider may disclose SUD patient-identifying information to a SSCM without a patient authorization if either of the following criteria are met:

- The SSCM is employed by the program that is licensed by California Department of Health Care Services (DHCS) to provide diagnosis, treatment or referral for treatment for the program's patients. Treatment may include care coordination after inpatient services. As long as the SUD patient-identifying information is shared within the same program, the sharing of information is allowed.
  [42 C.F.R. § 2.12(c)(3); Cal. Health & Safety § 11845.5(c)(1).]
- The SUD treatment provider works for a program/facility that is not licensed by DHCS and the SSCM is employed by a qualified service organization (QSO) to arrange for medical assistance, or directly provide follow-up care to the SUD program's patient. The QSO must have an appropriate written agreement in effect with the program as defined in the 42 C.F.R. Part 2 regulations. A QSO may not re-disclose SUD patient-identifying information without an authorization.
  [42 C.F.R. § 2.11, § 2.12(c)(4), § 2.32.]

If neither of the above conditions are met, the SUD patient-identifying information can be shared with a SSCM with a valid patient or patient's representative authorization.
[42 C.F.R. § 2.12; Cal. Health & Safety § 11845.5]

Citations and Related Guidance

- 42 C.F.R. § 2.11.
- 42 C.F.R. § 2.12.
- 42 C.F.R. §§ 2.12(c)(3) and (4).
- 42 C.F.R. § 2.32.
- 45 C.F.R. § 164.506.
- Cal. Civ. Code § 56.10(c).
- Cal. Health & Safety Code § 11845.5.
- Cal. Health & Safety Code § 11845.5(c)(1).
- Cal. Welf. & Inst. Code § 5328.
- Cal. Welf. & Inst. Code § 5328(a).
- Appendix 2 - Patient Authorization for Use or Disclosure

Scenario 5 - Mental Health to Caregiver

Description

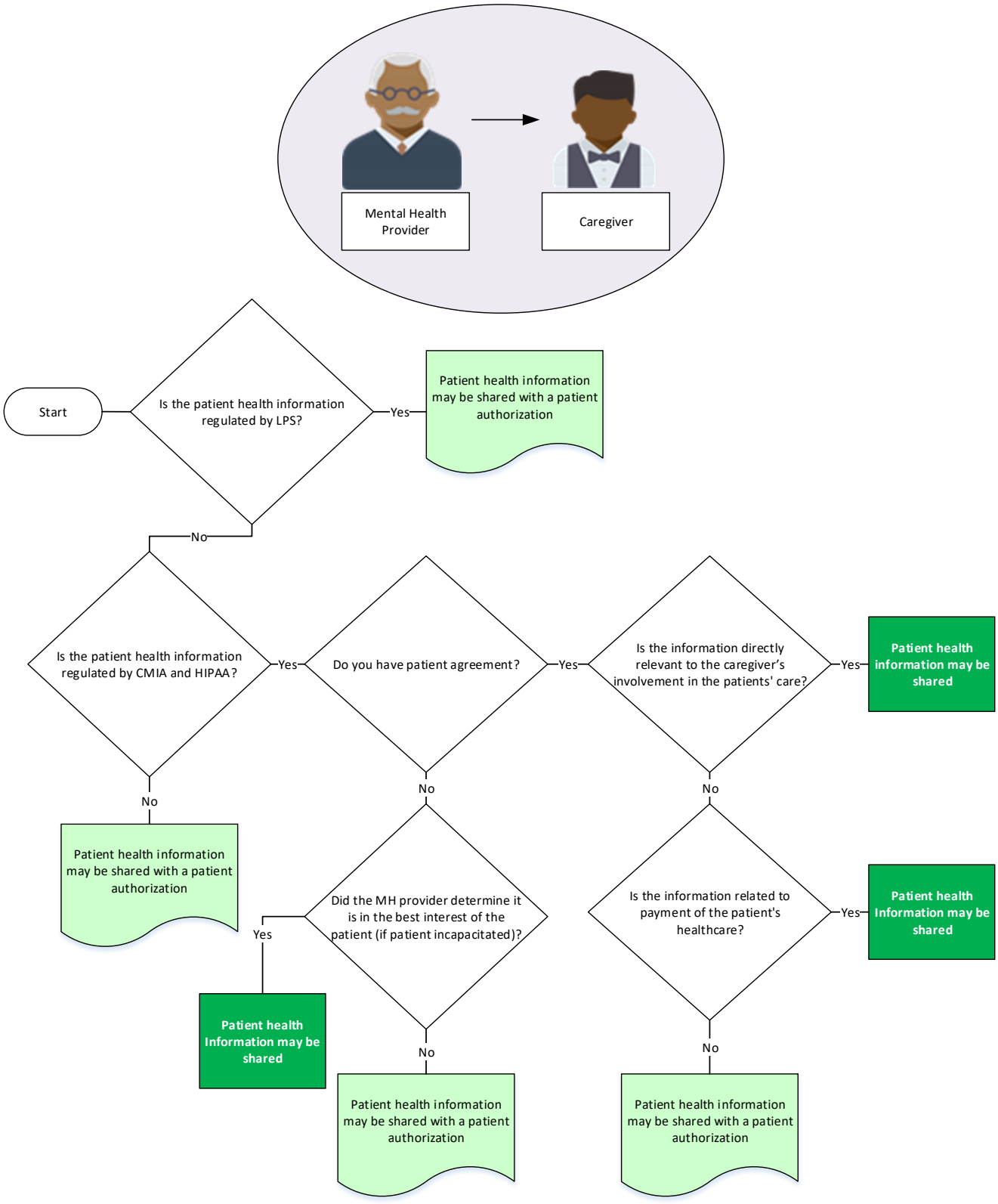
A mental health provider wants to share a patient's mental health information with a non-provider caregiver to arrange medical assistance for or directly provide follow-up care to the patient outside of the provider's outpatient or inpatient facility. Such information might include directions regarding follow-up care instructions, medications, in-home care guidelines, and related patient care services.

What patient health information can a mental health provider share with a person who has caregiver responsibilities?

Important Scenario Guidance Assumptions:

- Patient is an adult
- There is no patient or patient's representative authorization
- There is no court order
- Mental health information is regulated by Lanterman-Petris-Short (LPS)

Graphic - Mental Health to Caregiver



Scenario Guidance – Mental Health to Caregiver

Mental health information is specially protected. In most circumstances, in California mental health information may only be shared with the authorization of the patient or patient's representative.

Recognizing the importance of effective follow-up care, the State of California requires a written aftercare plan upon a patient's discharge from most inpatient mental health treatment. A variety of individuals (such as family members, domestic partner, neighbors, etc.) may be involved as caregivers to help with the aftercare. Health Insurance Portability and Accountability Act (HIPAA) and Confidentiality of Medical Information Act (CMIA) permit sharing of health information with caregivers without an authorization, but with the patient's agreement, when the information is:

- Directly relevant to the caregiver's involvement in the patient's care, or
- Related to payment of the patient's healthcare

If patient agreement cannot be obtained (for example, the patient is incapacitated), the above health information can be shared with the caregiver, if the mental health provider in the exercise of professional judgment determines the disclosure is in the best interest of the patient.
[45 C.F.R. § 164.510(b); Cal. Civ. Code § 56.1007; Cal. Health & Safety Code § 1262.]

Mental health information regulated by Lanterman-Petris-Short (LPS) can be shared with a caregiver with a valid patient or patient's representative authorization.
[Cal. Welf. & Inst. Code § 5328.1, § 5328(b).]

Citations and Related Guidance

- 45 C.F.R. § 164.510(b).
- Cal. Civ. Code § 56.1007.
- Cal. Health & Safety Code § 1262.
- Cal. Welf. & Inst. Code § 5328(b).
- Cal. Welf. & Inst. Code § 5328.1.
- Appendix 2 - Patient Authorization for Use or Disclosure

Scenario 6 - Substance Use Disorder to Caregiver

Description

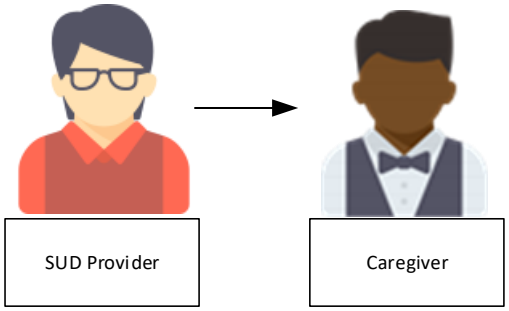
A substance use disorder (SUD) health provider wants to share a patient's SUD health information with a non-provider caregiver determining benefit eligibility for support services, arranging medical assistance for, or directly providing follow-up care to the patient outside of the provider's office or facility. Such information might include general direction regarding follow-up care instructions, medications, in-home care guidelines, and related patient care services.

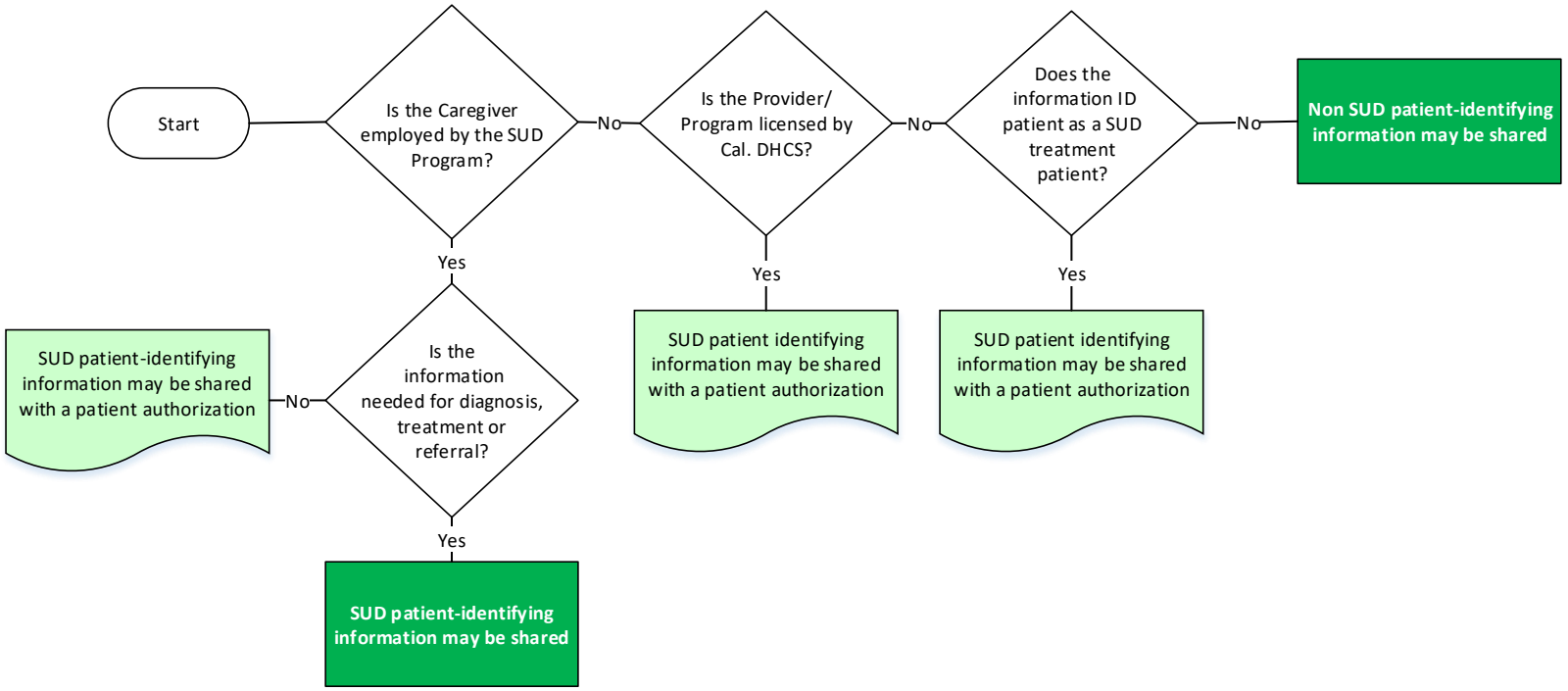
What patient health information can a substance use disorder provider share with a person who has caregiver responsibilities?

Important Scenario Guidance Assumptions:

- Patient is an adult
- There is no patient or patient's representative authorization
- There is no court order
- SUD health information is regulated by 42 C.F.R. Part 2

Graphic - Substance Use Disorder to Caregiver





Scenario Guidance - Substance Use Disorder to Caregiver

Substance use disorder (SUD) patient-identifying information is specially protected. Disclosure without patient authorization of any patient health information that identifies an individual directly or indirectly as having a current or past drug or alcohol problem, or as a participant in a covered program, is strictly regulated for any federally-assisted SUD treatment program. Since federal assistance is broadly defined in regulations and includes Medicare and Medicaid (Medi-Cal)[17] payments, a significant percentage of SUD patient-identifying information falls under the strict federal regulations (42 C.F.R. Part 2).

The Health Insurance Portability and Accountability Act (HIPAA) permits sharing of health information without an authorization, but with the patient's agreement, with family members and other individuals acting as caregivers when the health information is directly relevant to the person's involvement with the patient's healthcare (or payment related to the patient's healthcare). Under 42 C.F.R. Part 2 regulations, however, these types of disclosures are not permissible for SUD patient-identifying information without an authorization.
[42 C.F.R. §§ 2.1(a) and (b); 45 C.F.R. § 164.510(b)(1)(i).]

Despite the 42 C.F.R. Part 2 restrictions, a SUD treatment provider may share information without a patient authorization with a person acting as a caregiver to arrange medical assistance for, or directly providing care to, the patient outside of the program provider's office or facility if any of the following conditions are met:

- The caregiver is employed by the program to provide diagnosis, treatment or referral for treatment of the program's patients. As long as the SUD patient-identifying information is shared within the program, the sharing of information is internal and therefore allowed.
  [42 C.F.R. § 2.12(c)(3); 45 C.F.R. § 164.506; Cal. Health & Safety Code § 11845.5(c)(1), § 11845.5.]
- The SUD treatment provider not licensed by California Department of Health Services (DHCS) can share patient information in such a way that the caregiver can perform his or her responsibilities and the patient cannot be identified as a SUD patient directly, by reference to other publicly available information, or by verification as a SUD patient by another person.
  [42 C.F.R. § 2.12(a)(1); 45 C.F.R. § 164.501, §164.506.]

[17] Medi-Cal is the State of California's Medicaid program.

If none of the above conditions are met, then the SUD patient-identifying information can be shared with a caregiver with a valid patient or patient's representative authorization.
[42 C.F.R. § 2.31.]

Citations and Related Guidance

- 42 C.F.R. §§ 2.1(a) and (b).
- 42 C.F.R. § 2.12(a).
- 42 C.F.R. §§ 2.12(c)(3) and (4).
- 42 C.F.R. § 2.31.
- 45 C.F.R. § 164.501.
- 45 C.F.R. § 164.506.
- 45 C.F.R. § 164.510(b)(1)(i).
- Cal. Health & Safety Code § 11845.5.
- Cal. Health & Safety Code § 11845.5(c)(1).
- Appendix 2 - Patient Authorization for Use or Disclosure

Scenario 7 - To Improve Coordination of Care

Description

Many healthcare policy makers are increasingly interested in determining if improved coordination of care between physical health, behavioral health and social services providers results in better health outcomes. Such collaborative patient-centric care across multiple service providers often requires sharing protected behavioral health information in innovative ways for mental health and substance use disorder (SUD) treatment. To determine if better integration and coordination of care can lead to the desired outcomes, the State of California and the federal government have implemented several initiatives that provide funding to programs piloting alternative approaches to complex care to help meet medical, behavioral, and even socioeconomic needs.

Examples of initiatives exploring a more holistic approach include:

- **Whole Person Care (WPC) Pilots** – The initiative (authorized by the Medi-Cal[18] 2020 Demonstration) tests county-based approaches that coordinate physical health, behavioral health and social services for high-risk, high-utilizing Medi-Cal patients who receive help from multiple systems with poor outcomes. Some of the goals of the pilots are to improve care access and coordination, achieve better health outcomes for WPC populations, increase access to appropriate housing and support services, and reduce inappropriate emergency room and inpatient utilization.
- **Coordinated Care Initiative** – The demonstration project (currently authorized by the Medi-Cal 2020 Demonstration) promotes coordinated care to seniors and disabled persons with Medicare and Medi-Cal eligibility through specialized managed care plans.
- **Health Homes Program** – The initiative (authorized by the Affordable Care Act) allows providers to integrate and coordinate all primary, acute, behavioral health, and long-term services and related support for high-risk patients with Medicaid who have chronic conditions.[19]

Given the ongoing and active interest in such programs focused on integration and coordination of care, this scenario focuses on WPC as an example of an initiative that encourages the disclosure and sharing of specially protected health information for the benefit

[18] Medi-Cal is the State of California's Medicaid program.
[19] See Medicaid.gov website for more information: https://www.medicaid.gov/medicaid/ltss/health-homes/index.html

of the patient. Legislation authorizing such initiatives vary widely, and some of the legal citations supporting this scenario are specific to WPC and do not apply to other initiatives.

Individuals must agree to participate in the WPC Pilot program (pilot) to receive services, and can opt out at any time. Even within an authorized pilot, patient authorization is required to disclose 42 C.F.R. Part 2 regulated information. A patient authorization consistent with 42 C.F.R. Part 2 requirements to disclose information to other WPC participating entities can be signed during the WPC patient participation agreement process.

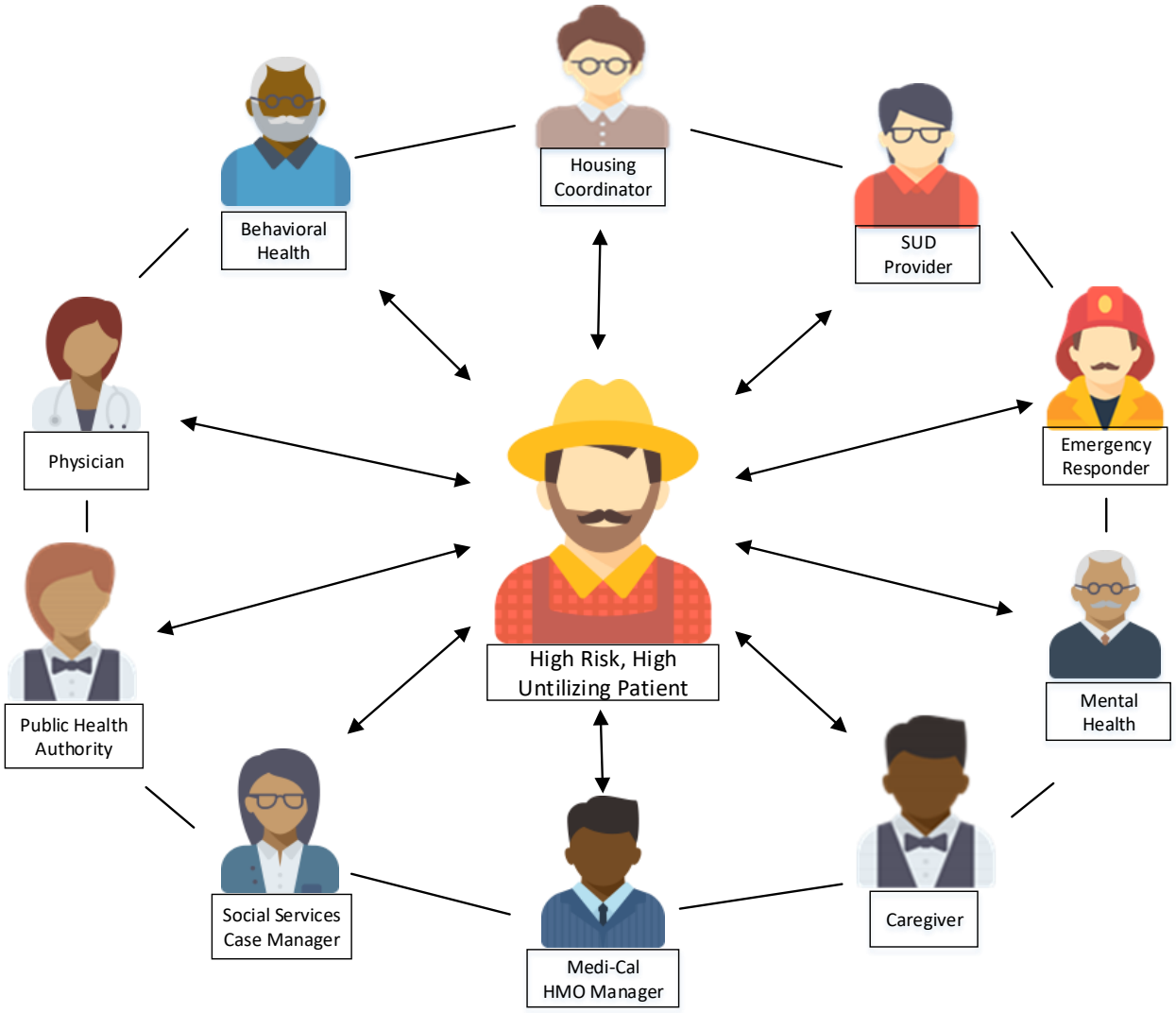
What patient health information can a mental health or SUD provider share with other WPC entities to improve coordination of care for the patient?

Important Scenario Guidance Assumptions:

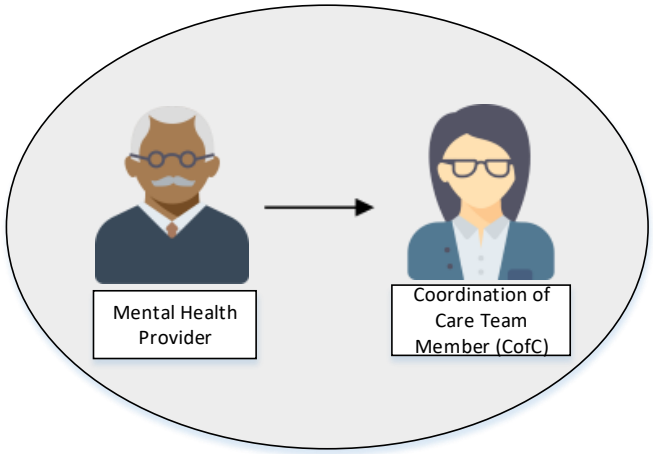
- Patient is an adult
- The patient or patient's representative has agreed to participate in a Whole Person Care pilot program
- Mental health information is regulated by Lanterman-Petris-Short (LPS)
- SUD health information is regulated by 42 C.F.R. Part 2

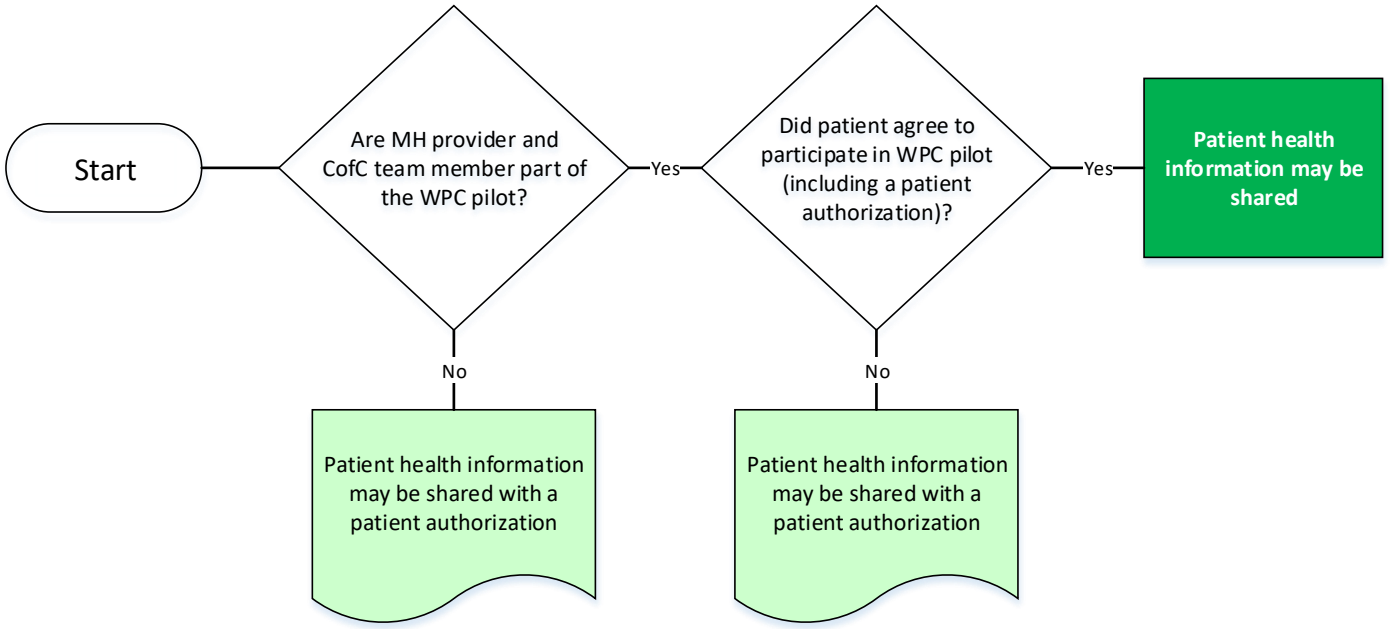
***Graphic – To Improve Coordination of Care* - Whole Person Care Illustration**

Note: WPC pilots focus on high-risk, high-utilizing Medi-Cal patients in specific geographic regions. Patient agreement to participate is required to receive pilot services. Participating providers/entities provide medical and non-medical services and participants vary by pilot.

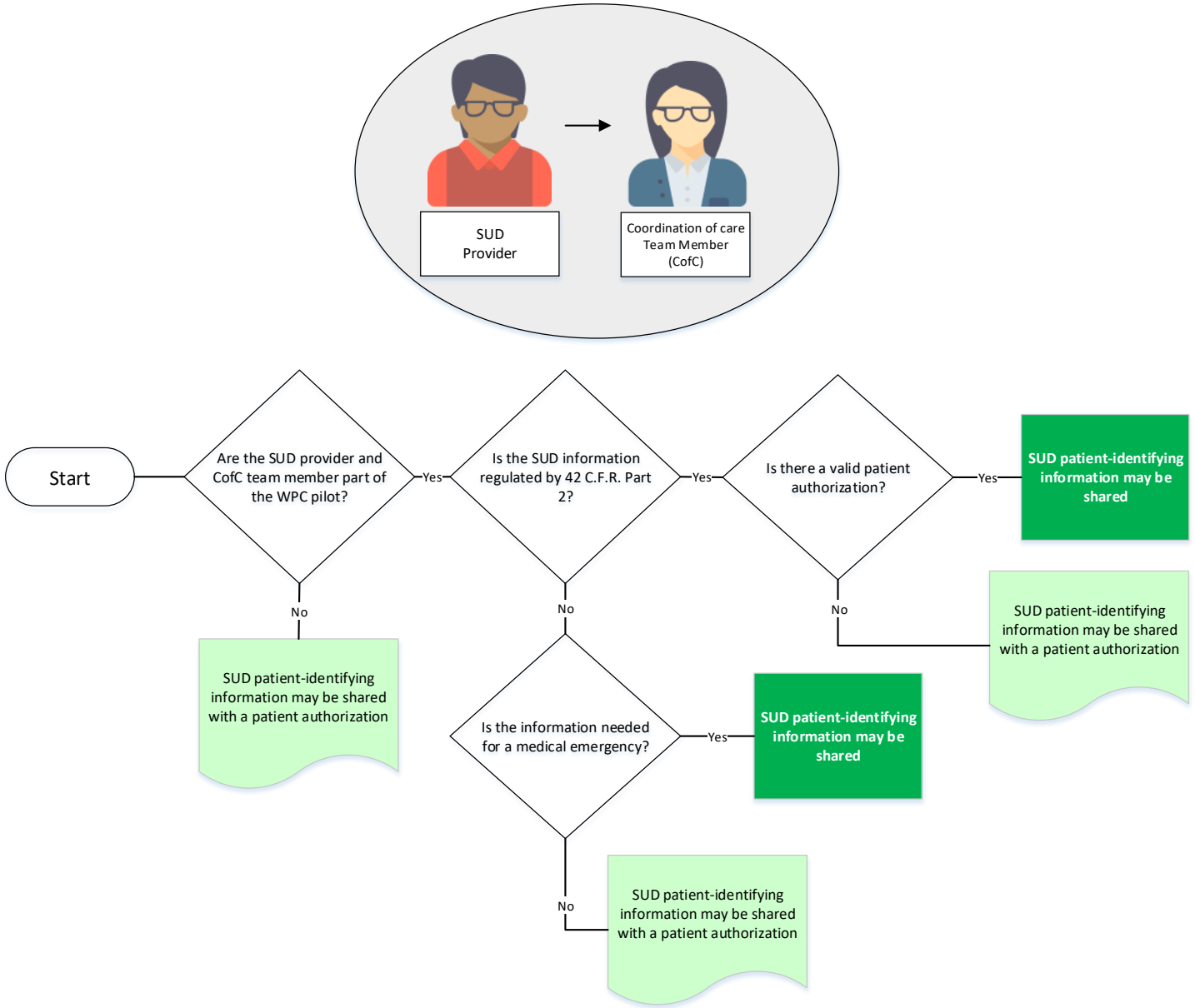


***Graphic – To Improve Coordination of Care* - Mental Health**





***Graphic – To Improve Coordination of Care* - Substance Use Disorder**



Scenario Guidance – To Improve Coordination of Care

For purposes of integrating and coordinating care on behalf of a patient through an authorized WPC pilot program, the statute authorizing WPC data-sharing requires the patient to agree to participate in the pilot with the ability to opt out at any time.
[Cal. Welf. & Inst. Code § 14184.60(a)(6).]

While state law permits behavioral health information to be shared between WPC entities without an authorization, federal laws do not. If the patient signs an authorization during the WPC participation agreement process, then WPC entities can use and disclose the patient's health and SUD treatment information within the pilot (per authorization instructions). For example, a WPC provider entity may share patient health information with a social services WPC entity.
[42 C.F.R. § 2.12, § 2.31; 45 C.F.R. § 164.506, § 164.508(b)(3); Cal. Welf. & Inst. Code § 14184.60(c)(1)(E)(5).]

If, during the WPC participation agreement process, the patient did not sign an authorization to use and disclose SUD patient-identifying information, the information may be shared between participants in the WPC pilot only if at least one of the following conditions is met:

- The SUD treatment provider discloses patient information that does not identify the patient as having a SUD or receiving SUD treatment in any way.
  [42 C.F.R. § 2.12(a).]
- The SUD patient-identifying information is necessary for the person receiving the information to respond to a medical emergency (See Scenario 8 - In the Event of Emergency).
  [42 C.F.R. § 2.51; Cal. Health & Safety Code § 11845.5(c)(2).]

If none of the above conditions are met, the SUD patient-identifying information can be shared between WPC participants, or between a provider not participating in the WPC pilot and pilot participants, with a valid patient or patient's representative authorization.
[42 C.F.R. § 2.31.]

Citations and Related Guidance

- 42 C.F.R. § 2.12.
- 42 C.F.R. § 2.12(a).
- 42 C.F.R. § 2.31.
- 42 C.F.R. § 2.51
- 45 C.F.R. § 164.506.
- 45 C.F.R. § 164.508(b)(3).
- Cal. Health & Safety Code § 11845.5(c)(2).
- Cal. Welf. & Inst. Code § 14184.60(a)(6).
- Cal. Welf. & Inst. Code § 14184.60(c)(1)(E)(5).
- Appendix 2 - Patient Authorization for Use or Disclosure

Scenario 8 - In the Event of Emergency

Description

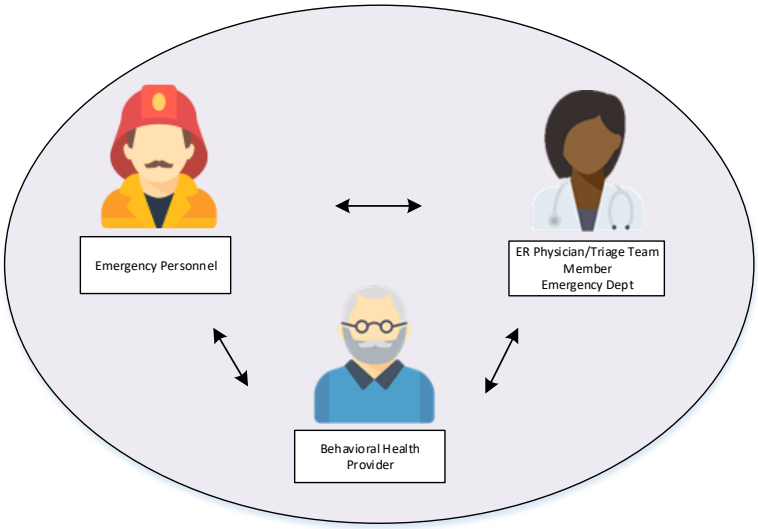
An individual with mental health or substance use disorder (SUD) issues is being treated by an Emergency Medical Services (EMS) provider, emergency room physician, hospital emergency department, or a triage team member.

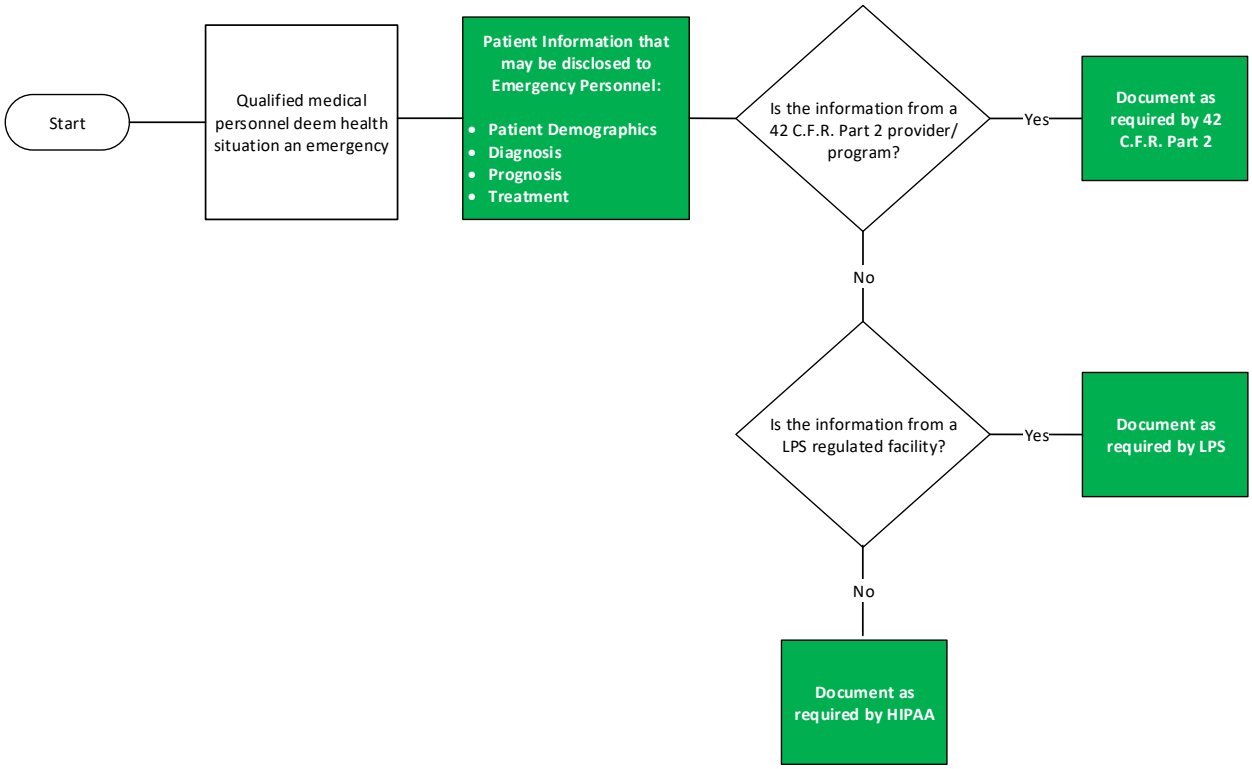
What patient health information can be shared in a medical emergency?

Important Scenario Guidance Assumptions:

- Must be a medical emergency
- Patient is unable to provide health information to healthcare professionals
- There is no patient or patient's representative authorization

Graphic - In the Event of Emergency





Scenario Guidance – In Event of Emergency

Every health information privacy law, including Lanterman-Petris-Short (LPS), allows behavioral health information to be shared in the event of a medical emergency for treatment. Mental health providers, SUD treatment providers (subject to 42 C.F.R. Part 2 regulations), contractors, and other healthcare professionals and facilities can share the following for the purpose of diagnosis or treatment of the patient in the event of a medical emergency (where the prior consent of the patient could not obtained):

- Patient demographics
- Diagnosis
- Prognosis
- Treatment

[42 C.F.R. § 2.51(a); 45 C.F.R. § 164.506; Cal. Civ. Code § 56.10(c)(1); Cal. Health & Safety Code § 11845.5(c)(2); Cal. Welf. & Inst. Code § 5328(a).]

Documentation Requirements When Provider is Regulated by HIPAA

Patient health information shared for emergency medical treatment purposes is generally not required to be documented outside of the medical record (e.g., for accounting of disclosure purposes), unless the entity is making the disclosure through an electronic health record.
[42 U.S.C. § 17935(c)(1)(A); 45 C.F.R. § 164.528(a)(1)(i).]

Documentation Requirements When Provider is Regulated by 42 C.F.R. Part 2

Immediately following disclosure of SUD patient-identifying information the entity providing the information must document the following in the patient's medical record:

- Name and affiliation with any healthcare facility of the medical personnel to whom disclosure was made
- Name of the individual making the disclosure
- Date and time of the disclosure
- Nature of the emergency

[42 C.F.R. § 2.51(c).]

Documentation Requirements When Provider is Regulated by LPS

If mental health information regulated by LPS is shared for emergency medical treatment, the provider must document the disclosure to emergency medical personnel in the patient's medical record. Documentation must include:

- Date
- Circumstance
- Name of recipient or organization
- Relationship to patient
- What information was disclosed

[Cal. Welf. & Inst. Code § 5328.6.]

Citations and Related Guidance

- 42 U.S.C. § 17935(c)(1)(A).
- 42 C.F.R. §§ 2.51(a) and (c).
- 45 C.F.R. § 164.506.
- 45 C.F.R. § 164.528(a)(1)(i).
- Cal. Civ. Code § 56.10(c)(1).
- Cal. Health & Safety Code § 11845.5(c)(2).
- Cal. Welf. & Inst. Code § 5328(a).
- Cal. Welf. & Inst. Code § 5328.6.
- Appendix 2 - Patient Authorization for Use or Disclosure

Payment and Determination of Benefits

When allowed by law, the minimally necessary health information can be shared for purposes of applying for or making a claim for medical assistance or benefits on behalf of a patient. Benefits or assistance may include payment of medical claims, medical assistance, aid insurance, and government healthcare benefits. Applying or making a claim for non-medical assistance or benefits on behalf of the patient generally requires patient authorization. Health information includes patient-specific information about mental health, substance use disorder (SUD) and general healthcare.

[45 C.F.R. § 164.502(b), § 164.514(d)]

Within their respective centers, programs, or care facilities/networks, behavioral health providers may share patient health information without patient authorization for purposes of applying for or making a claim for medical assistance or benefits on behalf of a patient. The ability to share health information for the above purposes outside a provider's center, program, or care facility/network varies depends on whether the patient information is regulated by 42 C.F.R. Part 2. For SUD, 42 C.F.R. Part 2 establishes stringent standards for use and disclosure of SUD patient-identifying information. Patient authorization is required when SUD patient-identifying information is disclosed for purposes of applying for or making a claim for benefits or assistance unless specific criteria (explained in more detail below) are met.

Scenario 9 - Behavioral Health to Social Services for Determination of Social Services Benefits

Description

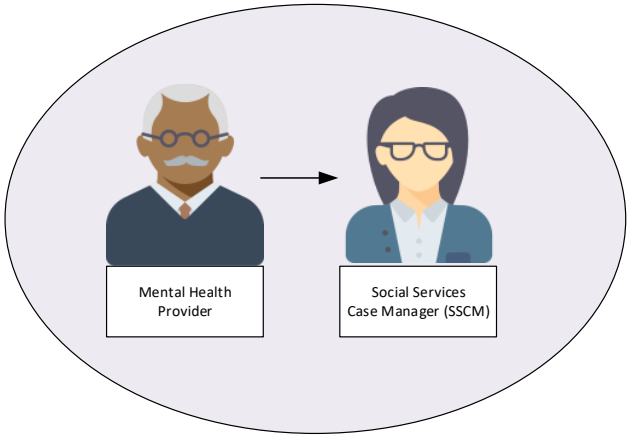
A behavioral health provider wants to share a patient's behavioral health information with a social services case manager (SSCM) to apply for or arrange social services benefits on behalf of the patient. Such information might include substance use disorder (SUD) patient-identifying information or Lanterman-Petris-Short (LPS) regulated mental health information. For purposes of this scenario, a SSCM a licensed clinical social worker or other similar provider.

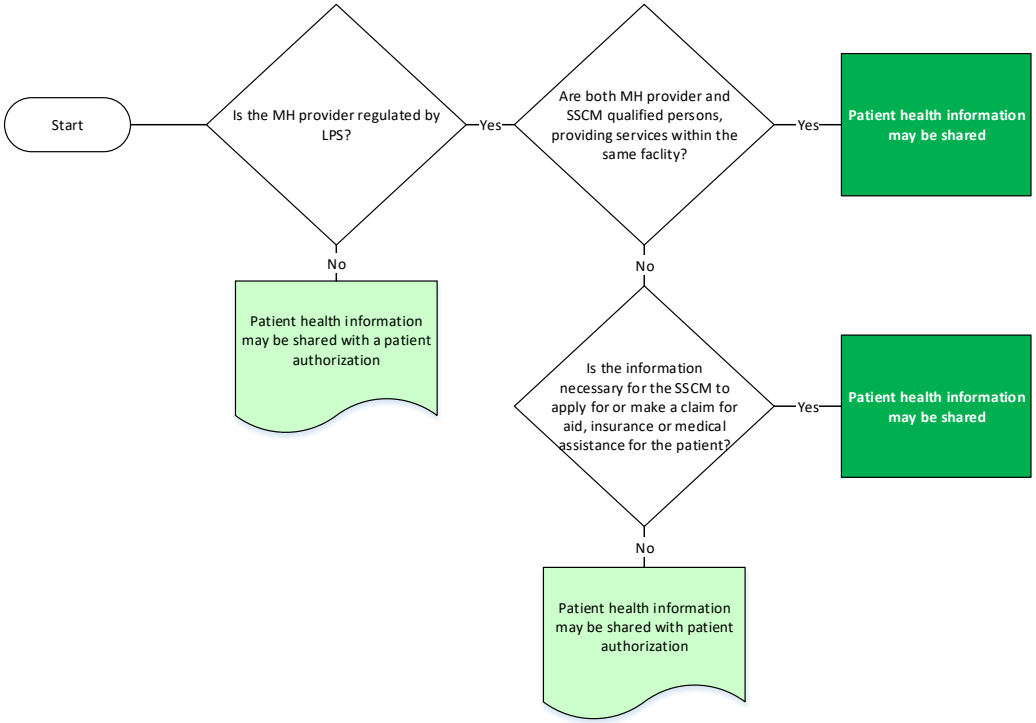
What patient health information can a behavioral health provider share with the social services case manager?

Important Scenario Guidance Assumptions:

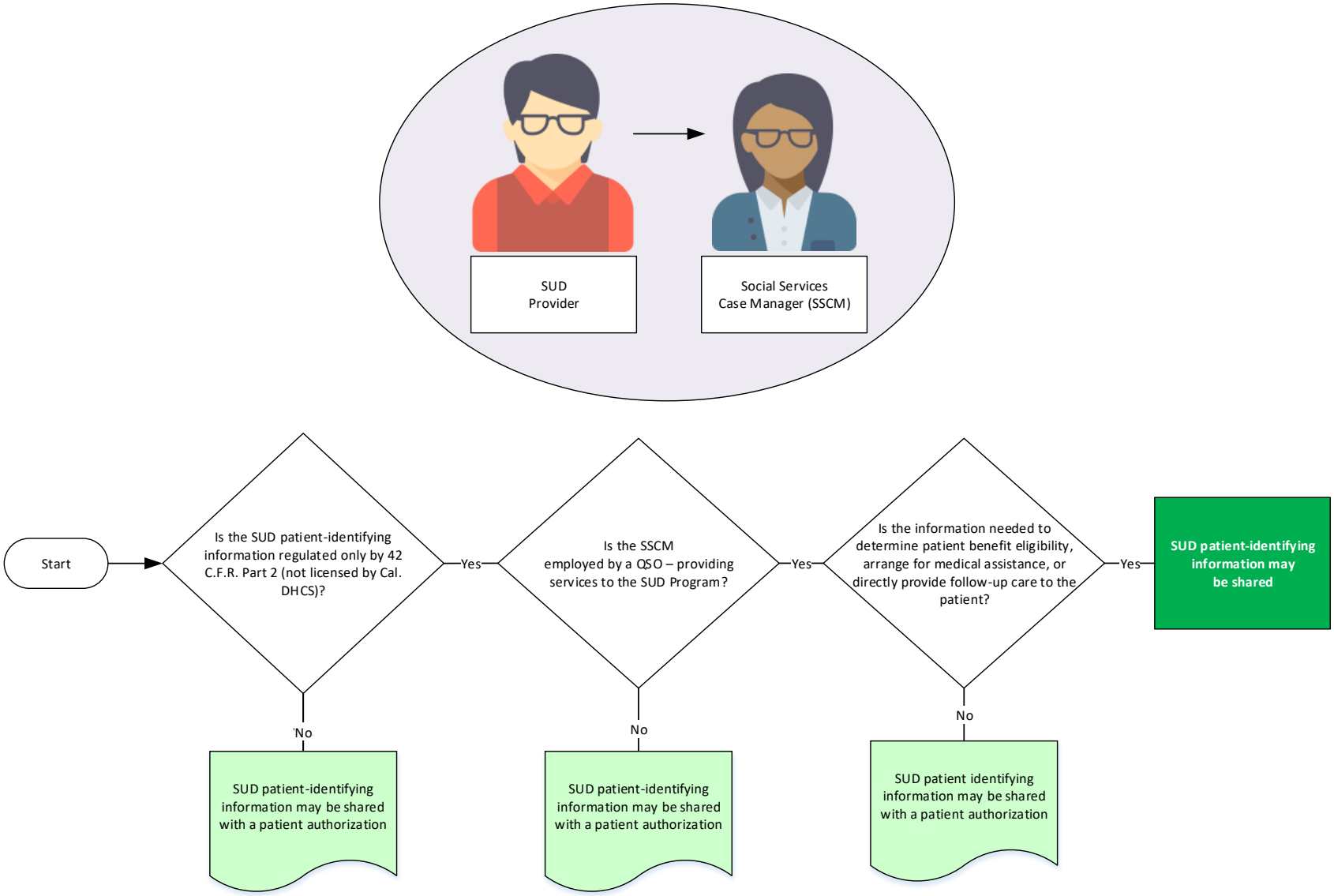
- Patient is an adult
- There is no patient or patient's representative authorization
- There is no court order
- There is no medical emergency
- Mental health information is regulated by LPS
- SUD health information is regulated by 42 C.F.R. Part 2

***Graphic - Behavioral Health to Social Services for Determination of Social Services Benefits* - Mental Health**





***Graphic - Behavioral Health to Social Services for Determination of Social Services Benefits* - Substance Use Disorder**



Scenario Guidance – Behavioral Health to Social Services for Determination of Social Services Benefits

Social services case managers may be involved with behavioral health patients for purposes of determining social services benefits. For purposes of applying for or making a claim for social services assistance or benefits, current laws limit disclosure and vary depending on whether the behavioral health information is regulated by LPS (mental health) or 42 C.F.R. Part 2 (SUD patient-identifying information). If the purpose of sharing behavioral health information with a SSCM is specifically to make a claim for social services assistance or benefits on behalf of the patient, the health information may be shared without a patient authorization only under the conditions described in the following paragraphs.

If the provider is not regulated by the Health Insurance Portability and Accountability Act (HIPAA), a mental health provider may disclose health information to a SSCM if either of the following criteria is met:

- The SSCM receiving the information and person providing the information are qualified professional persons providing services within the same treatment facility.
  [Cal. Welf. & Inst. Code § 5328(a).]
- The mental health information is necessary to make a claim or application for aid, insurance, or medical assistance on the patient's behalf.
  [Cal. Welf. & Inst. Code § 5328(c).]

If none of the above conditions are met, the mental health information can be shared with a SSCM only with a valid patient or patient's representative authorization.
[Cal. Welf. & Inst. Code § 5328(b).]

SUD patient-identifying information is specially protected under federal and state law. Without patient authorization, disclosure is strictly regulated for any patient information that identifies an individual directly or indirectly as having a current or past drug or alcohol problem, or as a participant in a SUD treatment program that receives federal assistance. Since federal assistance is broadly defined in regulations and includes Medicare and Medicaid (Medi-Cal)[20] payments, a significant percentage of SUD patient-identifying information falls under the strict federal regulations such as 42 C.F.R. Part 2.

[20] Medi-Cal is the State of California's Medicaid program.

Despite the restrictions, a SUD treatment provider only regulated by 42 C.F.R. Part 2 (and not licensed by Department of Health Care Services) may disclose health information to a SSCM without a patient authorization if the SSCM is employed by a qualified service organization (QSO) to determine patient benefit eligibility, arrange for medical assistance, or directly provide follow-up care to the program's SUD patient. The QSO must have an appropriate written agreement in effect with the program as defined in the 42 C.F.R. Part 2 regulations.
[42 C.F.R. § 2.11, § 2.12(c)(4); Cal. Health & Safety Code § 11845.5.]

If none of the above conditions are met, the SUD patient-identifying information can be shared with a SSCM with a valid SUD patient authorization. In the case of a SSCM, the patient authorization for a disclosure of SUD patient-identifying information must specify the name of the individual to whom disclosure will be made.
[42 C.F.R. § 2.31; 45 C.F.R. § 164.508; Cal. Health & Safety Code § 11845.5.]

Citations and Related Guidance

- 42 C.F.R. § 2.11.
- 42 C.F.R. §§ 2.12(c)(3) and (4).
- 42 C.F.R. § 2.31.
- 45 C.F.R. § 164.508.
- Cal. Health & Safety Code § 11845.5.
- Cal. Health & Safety Code § 11845.5(c)(1).
- Cal. Welf. & Inst. Code §§ 5328(a) - (c).
- Appendix 2 - Patient Authorization for Use or Disclosure

Healthcare Operations

Healthcare operations are certain administrative, financial, legal, and quality improvement activities that are necessary for a Health Insurance Portability and Accountability Act (HIPAA) covered entity to run its business. Even within the context of these activities, entities are required to ensure patient mental health information and substance use disorder (SUD) patient-identifying information is protected in accordance with HIPAA, California Medical Information Act (CMIA), California Health and Safety Code § 11845.5 (HSC § 11845.5), Lanterman-Petris-Short (LPS) Act, and 42 C.F.R. Part 2.

Scenario 10 - Quality Improvement

Description

The disclosure and use of health information is a key requirement to support quality improvement activities, which are in turn essential to the Triple Aim Initiative of "improving the patient experience of care, improving the health of populations, and reducing per capita costs of healthcare." [21]

Healthcare operations activities, which include quality improvement activities, may require the exchange of behavioral health information between health providers, health plans, business associates (BA), qualified service organizations (QSO), and accountable care organization (ACO) participants. The extent that behavioral health information can be shared for the above-mentioned purpose depends on the state or federal law by which the patient information is regulated.

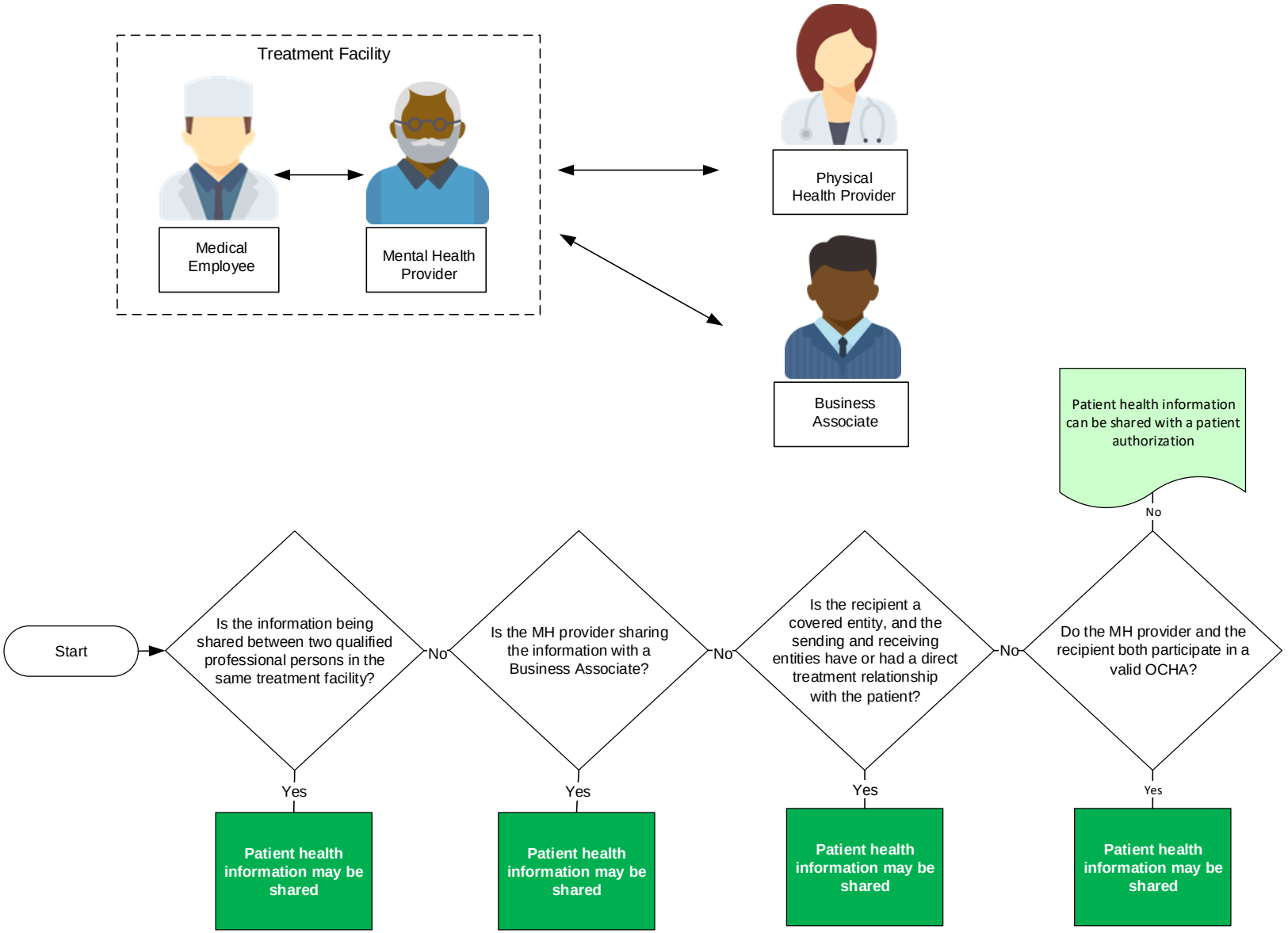
Under what circumstances can behavioral health information be shared for quality assessment and improvement activities?

Important Scenario Guidance Assumptions:

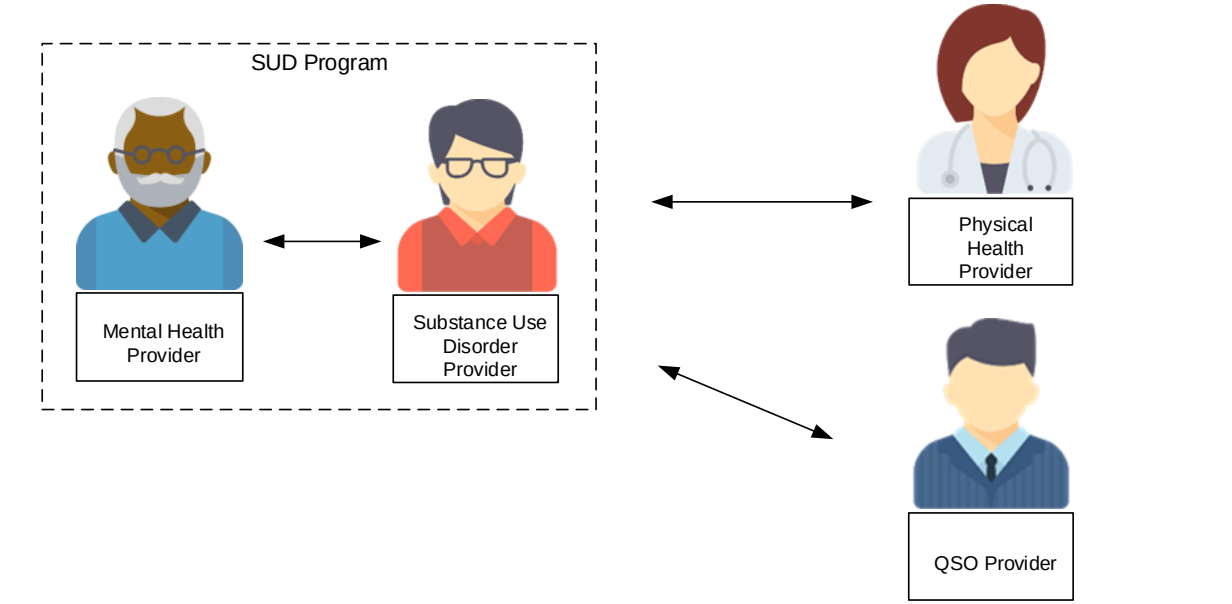
- There is no patient or patient's representative authorization
- There is no court order
- Mental health information is regulated by Lanterman-Petris-Short (LPS)
- SUD health information is regulated by 42 C.F.R. Part 2

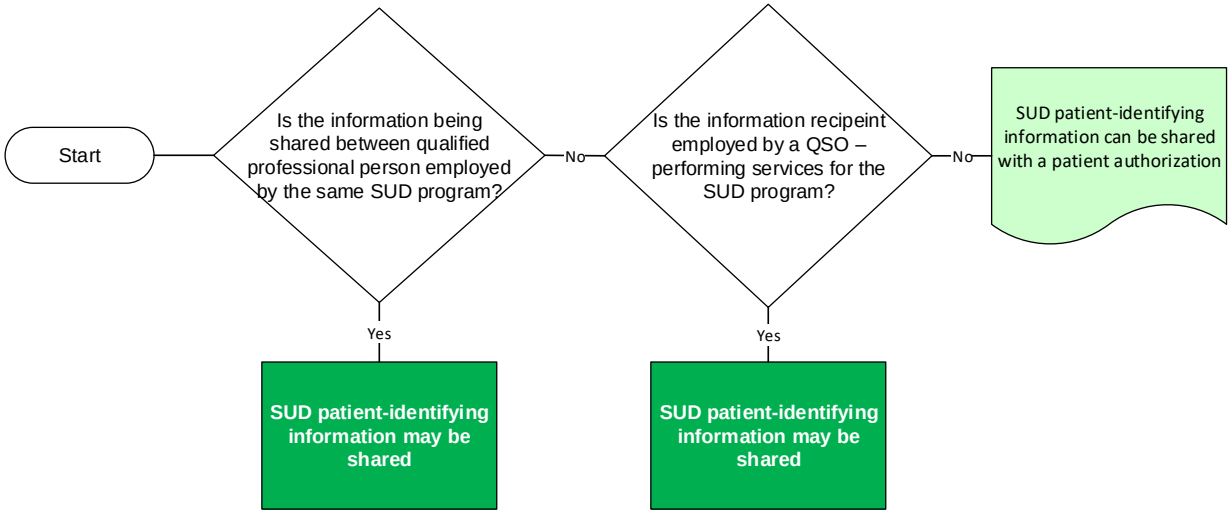
[21] Institute for Healthcare Improvement, "Triple Aim Initiative," 2017, http://www.ihi.org/Engage/Initiatives/TripleAim/Pages/default.aspx

Graphic - Quality Improvement - Mental Health



***Graphic - Quality Improvement* - Substance Use Disorder**





Scenario Guidance – Quality Improvement

Mental Health Information

For quality improvement activities performed within a mental health facility, LPS-regulated mental health information may be disclosed without patient authorization by a qualified professional person to another qualified professional person in the same treatment facility. Disclosures for purposes of quality improvement must be limited to the minimum necessary to achieve the purpose.
[45 C.F.R. § 164.502(b)(1); Cal. Welf. & Inst. Code § 5328(a).]

A mental health provider may disclose patient mental health information externally for quality improvement purposes if one of the following criteria are met[22]:

- The recipient of the information has executed a valid business associate agreement (BAA) with the provider to use and protect health information for quality improvement activities of the provider in the manner specified in the agreement and in compliance with other relevant regulations and statutes related to quality improvement.
  [45 C.F.R. § 160.103, §§ 164.308(b)(1) – (b)(3), § 164.504; Cal. Welf. & Inst. Code § 5328(a)(25).]
- The recipient of the information is a covered entity and has a need for the information for its own quality improvement purposes and the quality improvement activities are related to a direct treatment relationship the two entities have or had with the same patient.
  [45 C.F.R. § 164.506(c)(4); Cal. Welf. & Inst. Code § 5328(a)(25).]
- The recipient of the information and the mental health provider both participate in an organized health care arrangement (OHCA) such as an accountable care organization (ACO) with appropriate agreements (e.g., BAA) in place to disclose health information to other OHCA participants for OHCA healthcare operations activities, including quality assessment and improvement activities, and comply with other relevant regulations and statutes related to quality improvement.
  [45 C.F.R. § 164.308(b); Cal. Welf. & Inst. Code § 5328(a)(25).]

If none of the above conditions are met, the mental health information can be shared externally for quality improvement purposes with a valid patient or patient's representative authorization.
[45 C.F.R. § 164.508; Cal. Welf. & Inst. Code § 5328(b).]

[22] Effective January 1, 2018 - until that date, this type of sharing (per Cal. Welf. & Inst. Code § 5328) is not lawful under California law.

Substance Use Disorder Health Information

Substance use disorder (SUD) patient-identifying information regulated by 42 C.F.R. Part 2 and HSC § 11845.5 is specially protected under federal and state law. Disclosures for purposes of quality improvement must be limited to the minimum necessary to achieve the purpose.
[42 C.F.R. § 2.12; 45 C.F.R. § 164.502(b); Cal. Health & Safety Code § 11845.5.]

Despite the restrictions, a SUD treatment provider may disclose health information without a patient authorization for quality improvement purposes if any of the following conditions are met:

- The SUD patient-identifying information is shared with qualified professional persons employed by the SUD treatment provider's facility or program.
  [42 C.F.R. § 2.12(c)(3); Cal. Health & Safety Code § 11845.5(c)(1).]
- The SUD patient-identifying information is shared externally with the QSO (with a QSOA and BAA in place) for the purpose of performing management audits, financial and compliance audits, or program evaluation services to the program.
  [42 C.F.R. § 2.12(c)(4), § 2.53; Cal. Health & Safety Code § 11845.5(c)(3).]

If none of the above conditions are met, the SUD patient-identifying information can be shared with a valid patient or patient's representative authorization.
[42 C.F.R. § 2.31.]

Citations and Related Guidance

- 42 C.F.R. § 2.12.
- 42 C.F.R. §§ 2.12(c)(3) and (c)(4).
- 42 C.F.R. § 2.31.
- 42 C.F.R. § 2.53
- 45 C.F.R. § 160.103.
- 45 C.F.R. § 164.308(b).
- 45 C.F.R. § 164.502(b).
- 45 C.F.R. § 164.504.
- 45 C.F.R. § 164.506(c).
- 45 C.F.R. § 164.508.
- Cal. Health & Safety Code § 11845.5.
- Cal. Welf. & Inst. Code § 5328.
- Appendix 2 - Patient Authorization for Use or Disclosure

Scenario 11 - Audits

Description

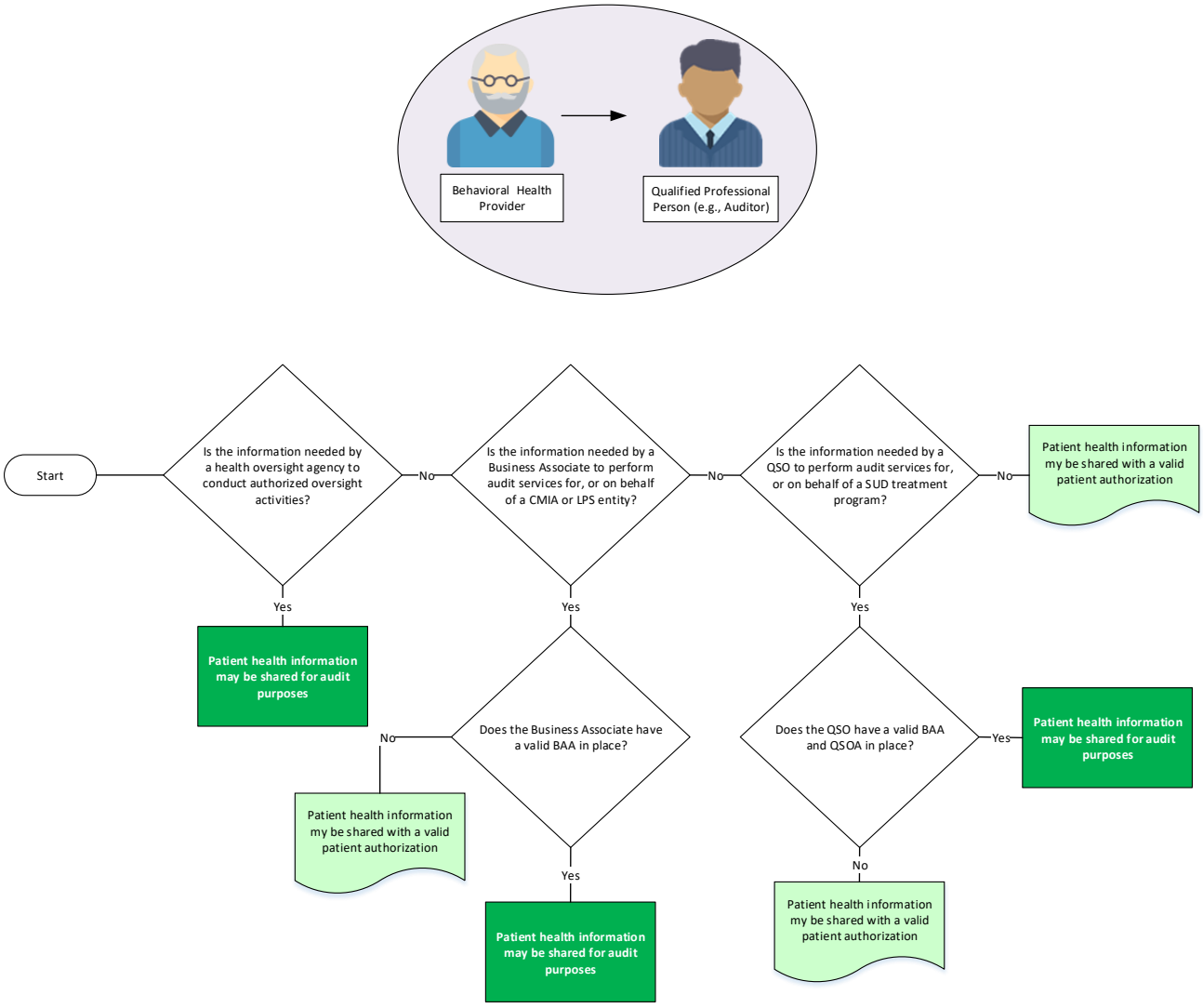
Auditors in the performance of their duties may ask for health information that includes patient health information or substance use disorder (SUD) patient-identifying information that is protected by 42 C.F.R. Part 2, Health Insurance Portability and Accountability Act (HIPAA), Lanterman-Petris-Short (LPS) Act, Confidentiality of Medical Information Act (CMIA), and/or Health and Safety Code (HSC) § 11845.5.

What patient health information can a provider share with an auditor during an audit?

Important Scenario Guidance Assumptions:

- There is no patient or patient's representative authorization
- There is no court order
- Mental health information is regulated by LPS or CMIA
- SUD health information is regulated by 42 C.F.R. Part 2

Graphic – Audits



Scenario Guidance – Audits

Auditing is an important part of an entity's quality management system to ensure compliance of requirements for the management of quality standards and practices. Health information that is minimally necessary to accomplish the purpose, including mental health and SUD information, can be shared for healthcare operations and health oversight activities.
[45 C.F.R. § 164.506, § 164.512(d); Cal. Civ. Code § 56.10(c)]

All health information privacy laws allow organizations to conduct their own medical review, legal services, and auditing functions, including financial audits, fraud and abuse detection, and compliance programs. These functions are considered healthcare operations and patient authorization is not required.
[42 C.F.R. § 2.12(c)(3); 45 C.F.R. § 164.506; Cal. Civ. Code § 56.10(c); Cal. Health & Safety Code § 11845.5(c)(3); Cal. Welf. & Inst. Code § 5328(a).]

Mental Health Information

Mental health information regulated by HIPAA and either CMIA or LPS may be shared by organizations with a business associate (BA) for external audit purposes with a valid business associate agreement (BAA).[23]
[45 C.F.R. § 164.508(b); Cal. Civ. Code § 56.10(c); Cal. Welf. & Inst. Code § 5328(a)(25)]

Mental health information regulated by HIPAA and CMIA may be disclosed to a health oversight agency, without an authorization, for authorized oversight activities (examples include, but are not limited to, audits, licensure or disciplinary actions).
[45 C.F.R. § 164.501, § 164.512(d); Cal. Civ. Code §§ 56.10(b) and (c).]

Mental health information regulated by HIPAA and LPS may be disclosed to the California Department of Public Health, California Department of Social Services, professional licensing boards, or as otherwise required by law.
[45 C.F.R. § 164.512(d); Cal. Welf. & Inst. Code § 5328.15; State Department of Public Health v. Superior Court (2015) 60 Cal.4th 940, 954.]

Substance Use Disorder Information

When conducting management or financial audits, or program evaluation for SUD treatment programs, health information can be disclosed to qualified professional persons, as long as any report on such activities does not identify patients in any way.
[42 C.F.R. § 2.53; Cal. Health & Safety Code § 11845.5(c)(3).]

[23] Effective January 1, 2018 - until that date, this type of sharing (per Cal. Welf. & Inst. Code § 5328) is not lawful under California law.

Qualified service organizations (QSO) provide services to a program and are granted access to SUD patient-identifying information in the performance of their responsibilities without a patient authorization but with a qualified service organization agreement (QSOA) and BAA. The QSOA and BAA must acknowledge being fully bound by these regulations and provides services to the program (e.g.; legal, accounting, or other professional services).
[42 C.F.R. § 2.11, § 2.12(c)(4).]

A SUD treatment provider may disclose information to a health oversight agency as long as any report does not identify the patient in any way.
[42 C.F.R. § 2.53; 45 C.F.R. § 164.512(d); Cal. Health & Safety Code § 11845.5(c)(3).]

If none of the above conditions are met, the health information can be shared for auditing purposes with a valid patient or patient's representative authorization.
[42 C.F.R. § 2.31; Cal. Welf. & Inst. Code § 5328(b)]

Citations and Related Guidance

- 42 C.F.R. § 2.11.
- 42 C.F.R. §§ 2.12(c)(3) and (4).
- 42 C.F.R. § 2.31.
- 42 C.F.R. § 2.53.
- 45 C.F.R. § 164.501.
- 45 C.F.R. § 164.502(b).
- 45 C.F.R. § 164.506.
- 45 C.F.R. § 164.508(b).
- 45 C.F.R. § 164.512(d).
- Cal. Civ. Code §§ 56.10(b) and (c), (5) and (14).
- Cal. Health & Safety Code § 11845.5(c)(3).
- Cal. Welf. & Inst. Code § 5328(a).
- Cal. Welf. & Inst. Code § 5328(b).
- Cal. Welf. & Inst. Code § 5328(a)(25).
- Cal. Welf. & Inst. Code § 5328.15.
- State Department of Public Health v. Superior Court (2015) 60 Cal.4th 940, 954.
- Appendix 2 - Patient Authorization for Use or Disclosure

Scenario 12 - Business Associates

Description

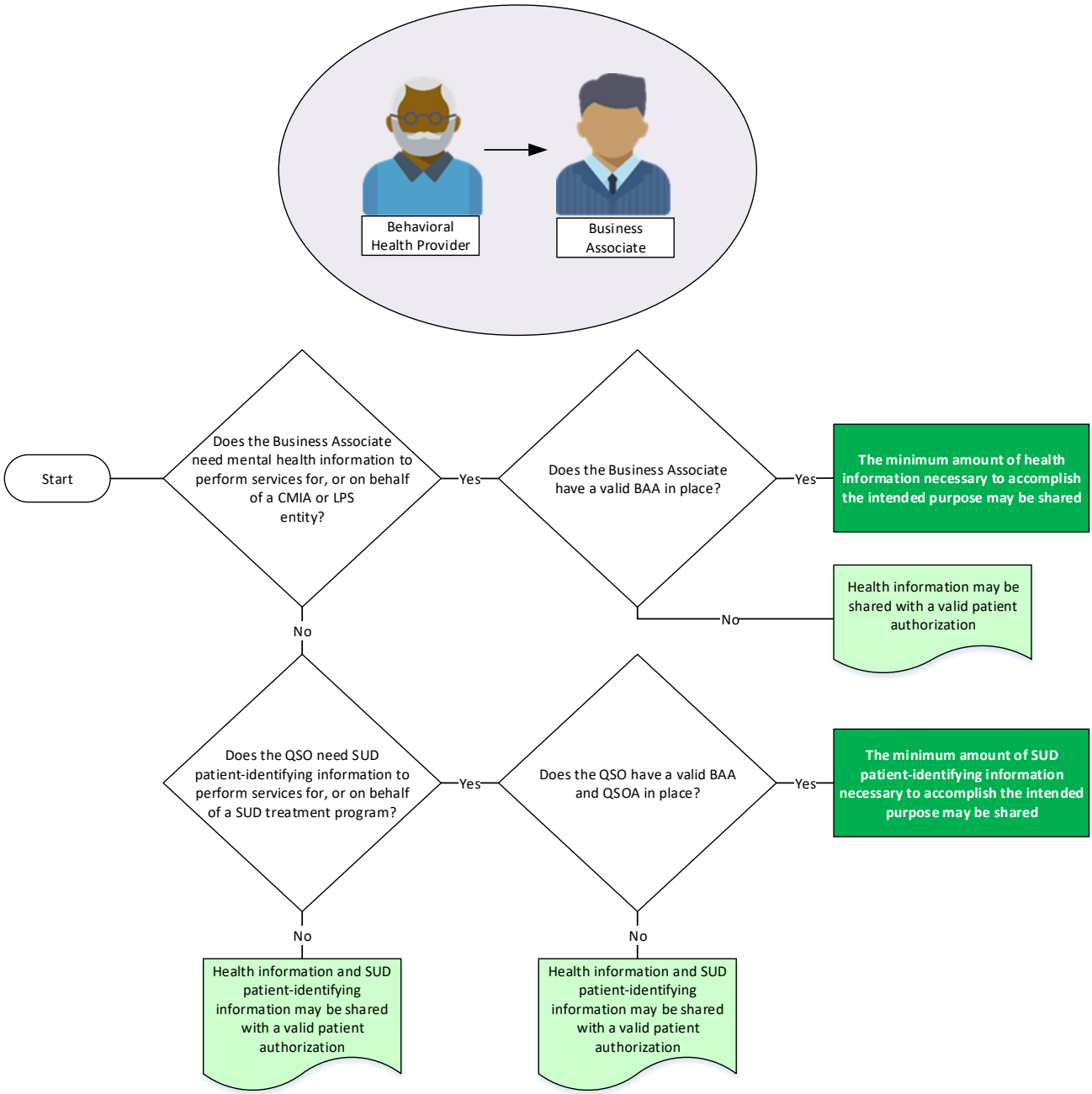
A business associate (BA) in the performance of its duties needs access to health information including mental health information or substance use disorder (SUD) patient-identifying information protected by 42 C.F.R. Part 2, Lanterman-Petris-Short (LPS) Act, Confidentiality of Medical Information Act (CMIA), California Health and Safety Code (HSC) § 11845.5, or Health Insurance Portability and Accountability Act (HIPAA).

What patient health information can a behavioral health provider share with their business associates?

Important Scenario Guidance Assumptions:

- There is no patient or patient's representative authorization
- There is no court order

Graphic - Business Associates



Scenario Guidance – Business Associates

A business associate agreement (BAA) is required to protect health information in accordance with HIPAA guidelines. A BA can use or disclose health information only in the manner specified in the BAA. Each entity may have specific program requirements that need to be incorporated into the BAA. The BAA must state the BA will comply with all applicable legal requirements.
[45 C.F.R. § 164.314.]

Mental Health Information

While HIPAA and CMIA allow for sharing with BAs, other federal and state laws are more restrictive. Mental health information regulated by CMIA or LPS may be shared with BAs provided a current signed BAA is in place. When sharing health information or when requesting health information from another covered entity or BA, a covered entity or BA must make reasonable efforts to limit health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.[24]
[45 C.F.R. § 164.308(b), § 164.502(b), § 164.514(d); Cal. Civ. Code § 56.10(c); Cal. Welf. & Inst. Code § 5328(a)(25).]

Substance Use Disorder Health Information

SUD patient-identifying information may be shared with a qualified service organization (QSO) to provide services to the program. QSOs performing services for or on behalf of SUD treatment programs regulated by 42 C.F.R. Part 2 require a BAA and a qualified service organization agreement (QSOA) be executed prior to the disclosure or sharing of health information that is SUD patient-identifying information. Any information identifying a patient as being or having been diagnosed with or treated for SUD either directly or indirectly should be limited to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.
[42 C.F.R. § 2.12(c)(4), § 2.32; 45 C.F.R. § 164.308(b), § 164.314(a), § 164.502, § 164.502(b), § 164.504(e); Cal. Health & Safety Code §§ 11845.5(c)(1) and (3).]

A QSO may re-disclose SUD patient-identifying information only with a valid patient or patient's representative authorization.
[42 C.F.R. § 2.12(c)(4)]

[24] Effective January 1, 2018 – until that date, this type of sharing (per Cal. Welf. & Inst. Code § 5328) is not lawful under California law.

Citations and Related Guidance

- 42 C.F.R. § 2.12(c)(4).
- 42 C.F.R. § 2.32.
- 45 C.F.R. § 164.308(b).
- 45 C.F.R. § 164.314.
- 45 C.F.R. § 164.502.
- 45 C.F.R. § 164.502(b).
- 45 C.F.R. § 164.504(e).
- 45 C.F.R. § 164.514.
- Cal. Civ. Code § 56.10.
- Cal. Health & Safety Code §§ 11845.5(c)(1) and (3).
- Cal. Welf. & Inst. Code § 5328(a)(25).
- Appendix 2 - Patient Authorization for Use or Disclosure

Scenario 13 - Behavioral Health Organization Policy and Strategy Development

Description

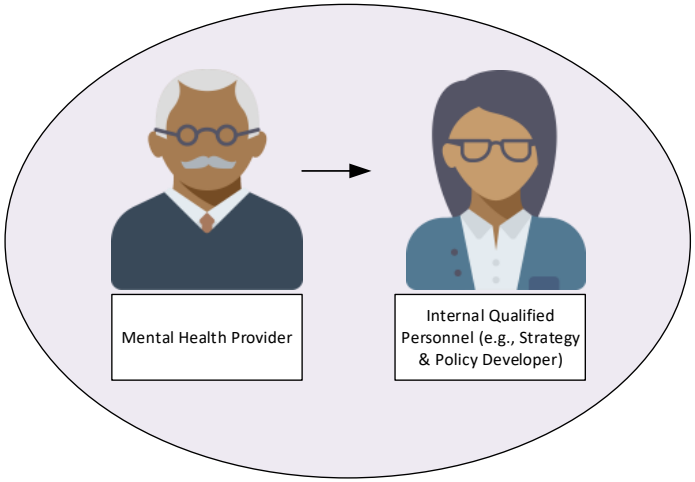
Like all organizations, a healthcare entity needs to develop strategies and policies to improve the effectiveness of the organization. In most cases strategic planning is performed by leadership and consulting teams, often using data that includes summarized patient information, public health and industry trends, and changing regulations. When summarized, patient health information is used to inform development of organizational strategy and policy, it can provide distinct insights into opportunities and risks.

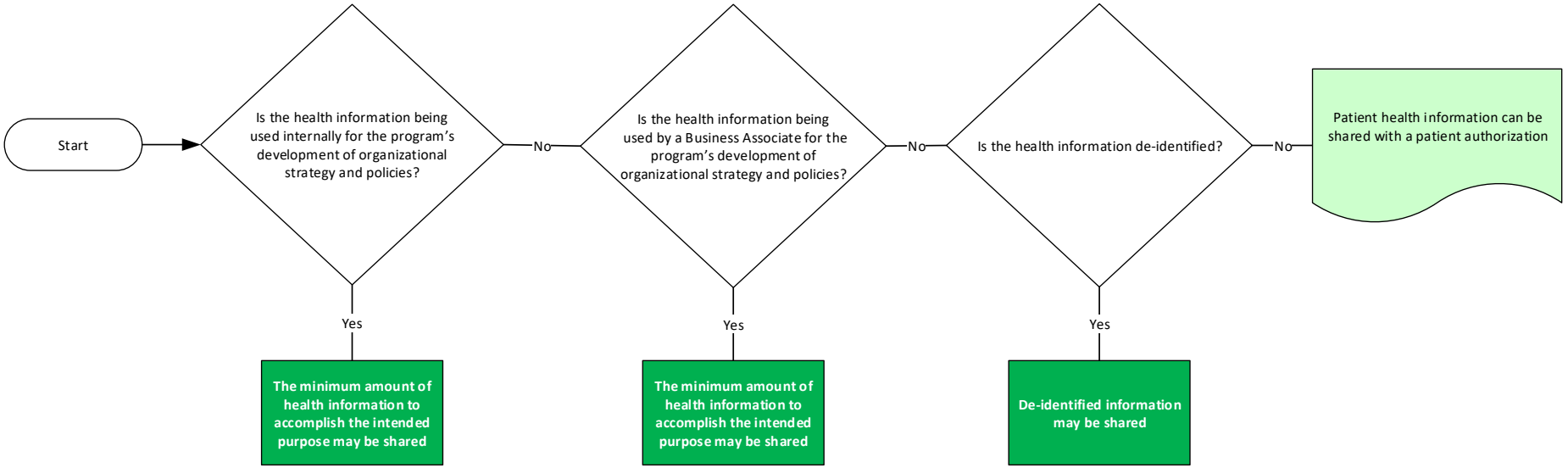
What patient health information can a behavioral health provider share with a team developing strategy and policy for an organization?

Important Scenario Guidance Assumptions:

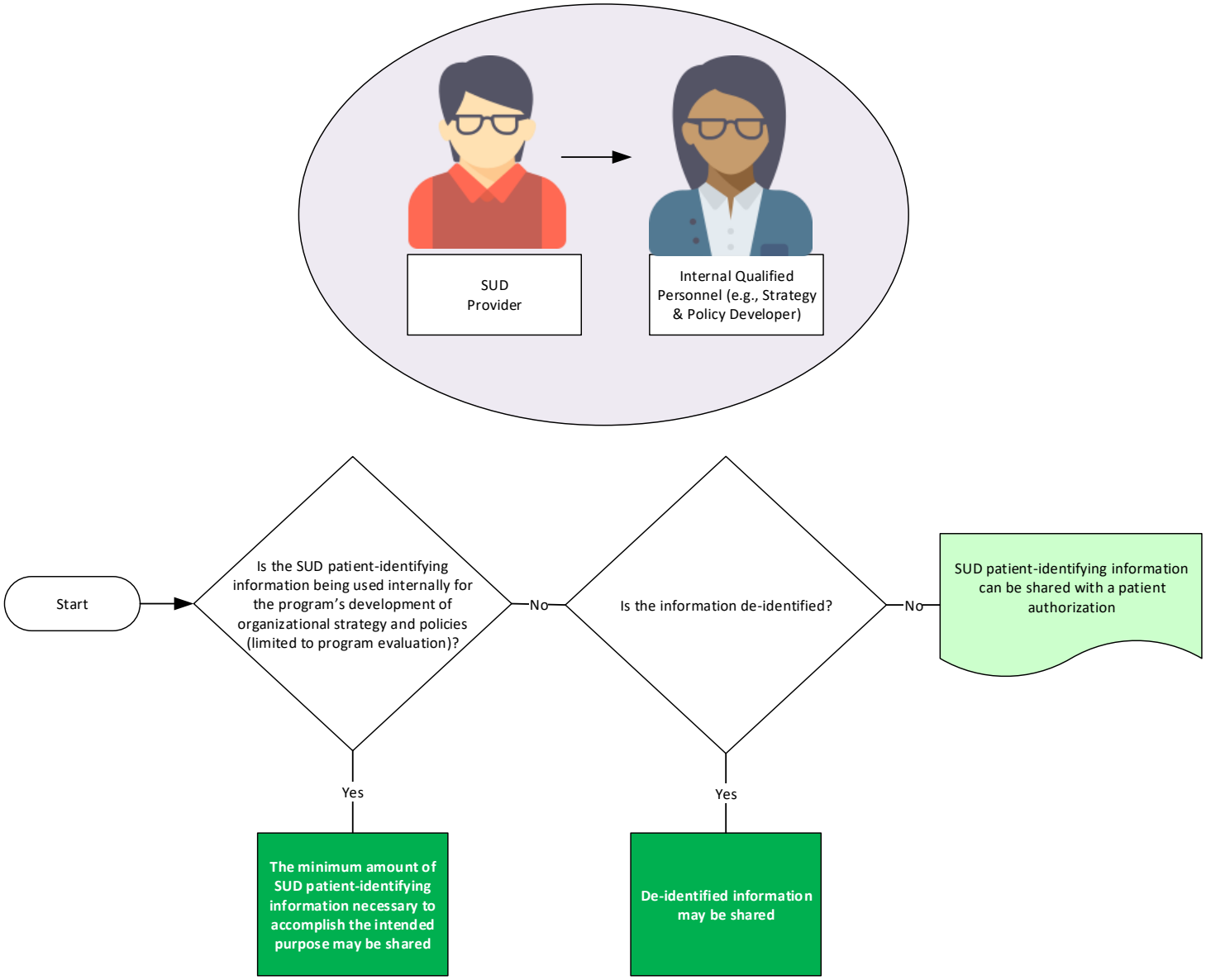
- There is no patient or patient's representative authorization
- There is no court order
- Mental health information is regulated by Confidentiality of Medical Information Act (CMIA) or Lanterman-Petris-Short (LPS)
- SUD health information is regulated by 42 C.F.R. Part 2

***Graphic - Behavioral Health Organization Policy and Strategy Development* - Mental Health**





***Graphic - Behavioral Health Organization Policy and Strategy Development* - Substance Use Disorder**



Scenario Guidance – Behavioral Health Organization Policy and Strategy Development

Behavioral health information that identifies the patient is specially protected under federal and state laws. For purposes of developing organizational strategy and policy behavioral health, information can be shared with strategic planning teams, without a patient authorization, limited to the minimum necessary health information to accomplish the intended purpose, in the following ways:
[45 C.F.R. § 164.502(b)(1), § 164.506(c)]

- When the mental health information is regulated by the Health Insurance Portability and Accountability Act (HIPAA) and CMIA, or LPS (but not regulated by California Health and Safety Code [HSC] § 11845.5 or 42 C.F.R. Part 2), it can be shared as part of its own healthcare operations (including business associates).[25]
  [45 C.F.R. § 164.501, § 164.502(b)(1), § 164.506; Cal. Civ. Code § 56.10(c)(3); Cal. Welf. & Inst. Code § 5328(a)(25).]
- When the SUD patient-identifying information is regulated by 42 C.F.R. Part 2, but not by HIPAA, and the SUD treatment provider is not licensed by Department of Health Care Services (DHCS), it may disclosed to an internal team of qualified personnel developing organizational strategy or policy limited to program evaluation.
  [42 C.F.R. §§ 2.12(c)(3) and (4); 45 C.F.R. § 164.502(b)(1); Cal. Health & Safety Code § 11845.5(c)(3).]

If neither of the above conditions is met, the behavioral health information can be shared:

- If the health information has been de-identified according to HIPAA's guidelines, or
  [45 C.F.R. §§ 164.514(a) and (b); Cal. Civ. Code § 56.10]
- With a valid patient or patient's representative authorization.
  [42 C.F.R. § 2.31, § 2.33.]

[25] Effective January 1, 2018 – until that date, this type of sharing (per Cal. Welf. & Inst. Code § 5328) is not lawful under California law.

Citations and Related Guidance

- 42 C.F.R. §§ 2.1.2(c)(3) and (4).
- 42 C.F.R. § 2.31.
- 42 C.F.R. § 2.33.
- 45 C.F.R. § 164.501.
- 45 C.F.R. § 164.502(b)(1).
- 45 C.F.R. § 164.506.
- 45 C.F.R. §§ 164.514(a) and (b).
- Cal. Civ. Code 56.10.
- Cal. Health & Safety Code § 11845.5(c)(3).
- Cal. Welf. & Inst. Code § 5328(a)(25).
- Appendix 2 - Patient Authorization for Use or Disclosure

Law Enforcement

The sharing of patient health information at a behavioral health facility is limited, when requested by a law enforcement official (LEO). The specific information that can be shared depends on whether the facility is a substance use disorder (SUD) provider or facility (regulated by 42 C.F.R. Part 2 and California Health and Safety Code § 11845.5).

Scenario 14 - Law Enforcement Official Requesting Information from a Substance Use Disorder Treatment Facility

Description

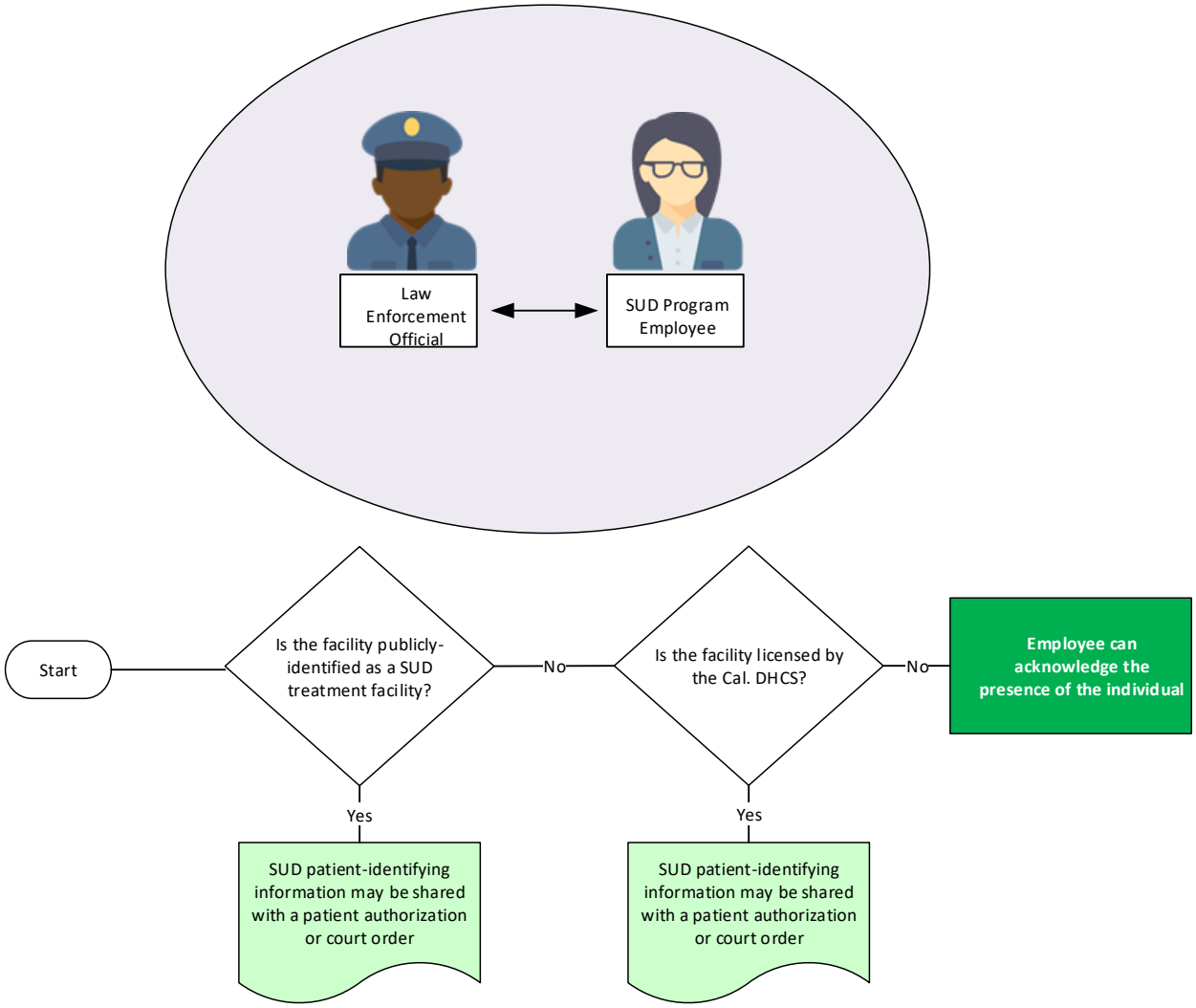
A law enforcement official (LEO) investigating a crime asks for information from an employee in the reception area of a substance use disorder (SUD) treatment facility regulated by 42 C.F.R. Part 2 and California Health and Safety Code (HSC) § 11845.5 about a person who is reportedly a patient.

What patient information can be shared with the law enforcement official?

Important Scenario Guidance Assumptions:

- Patient is an adult
- There is no patient or patient's representative authorization
- There is no court order
- SUD health information is regulated by 42 C.F.R. Part 2 and HSC § 11845.5

Graphic - Law Enforcement Official Requesting Information from a Substance Use Disorder Treatment Facility



Scenario Guidance – Law Enforcement Official Requesting Information from a Substance Use Disorder Treatment Facility

Employees of a publicly-identified SUD treatment facility or component of a healthcare facility regulated by 42 C.F.R. Part 2 and HSC § 11845.5 are limited by law regarding the SUD patient-identifying information they can provide to a law enforcement official (such as police officer, sheriff's deputy, district attorney, or detective). Without a valid authorization or a court order to release SUD patient-identifying information, generally no information may be released. *[42 C.F.R. §§ 2.13(c)(1) – (c)(2); Cal. Health & Safety Code §§ 11845.5(a) – (b)]*

Employees of a non-publicly identified SUD treatment facility or component of a healthcare facility, not licensed by California Department of Health Care Services (DHCS) but regulated by 42 C.F.R. Part 2 may acknowledge the presence of an individual. However, 42 C.F.R. Part 2 regulations do not require entities to acknowledge that an individual is a patient. No other SUD patient-identifying information may be disclosed without a valid authorization or court order. *[42 C.F.R. §§ 2.13(c)(1) – (c)(2); Cal. Health & Safety Code §§ 11845.5(a) – (b)]*

In any case, with a valid patient or patient's representative authorization, the SUD treatment facility you may disclose the patient-identifying health information.

Citations and Related Guidance

- 42 C.F.R. §§ 2.13(c)(1) – (c)(2).
- Cal. Health & Safety Code §§ 11845.5(a) – (b).
- Appendix 2 - Patient Authorization for Use or Disclosure

Scenario 15 - Law Enforcement Official Requesting Information from Mental Health Facility

Description

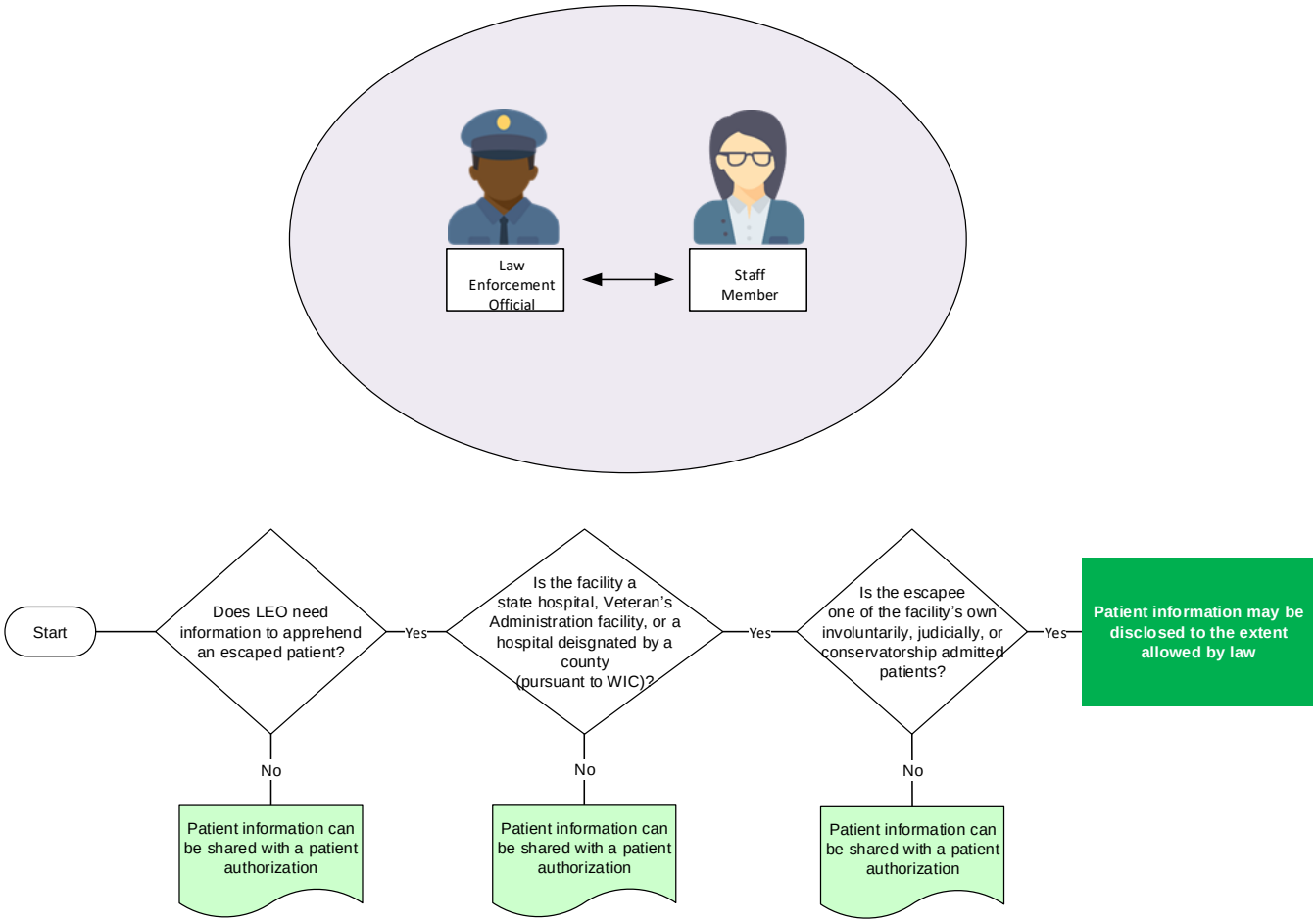
A law enforcement official (LEO) investigating a crime that did not occur on the premises of a mental health facility asks for patient information from an employee in the reception area of the facility, which is subject to the Lanterman-Petris-Short (LPS) Act.

What patient information can be shared with the law enforcement official?

Important Scenario Guidance Assumptions:

- There is no patient or patient's representative authorization
- There is no court order or warrant
- Employee is authorized by the facility to access patient information
- Mental health information is regulated by LPS

Graphic - Law Enforcement Official Requesting Information from Mental Health Facility



Scenario Guidance – Law Enforcement Official Requesting Information from Mental Health Facility

Employees of a mental health facility regulated by the LPS are limited by law in the information they can provide to a law enforcement official (such as police officer, sheriff's deputy, or detective). Without a valid authorization or a court order to release patient-identifying information, generally no information may be released.
[Cal. Welf. & Inst. Code § 5328]

However, to assist law enforcement with the apprehension of an escaped patient who is involuntarily, judicially, or conservatorship committed in a facility which is a state hospital, a Veteran's Administration facility, or a hospital designated by a county pursuant to the Welfare and Institutions Code, patient information can be disclosed as needed to authorized law enforcement officials and agencies solely to help apprehend the patient. The information that can be disclosed includes, but limited to:

- Name and physical description of the patient
- Patient's home address
- Degree of danger posed by the patient (including specific information about whether the patient is deemed likely to cause harm to himself or herself or to others)
- Any additional information necessary to apprehend and return the patient

[45 C.F.R. §§ 164.512(a) and (f); Cal. Welf. & Inst. Code § 7325, § 7325.5.]

In any case, with a valid patient or patient's representative authorization, the mental health facility may disclose the patient-identifying information.

Citations and Related Guidance

- 45 C.F.R. §§ 164.512(a) and (f).
- Cal. Welf. & Inst. Code § 5328.
- Cal. Welf. & Inst. Code § 7325.
- Cal. Welf. & Inst. Code § 7325.5.
- Appendix 2 - Patient Authorization for Use or Disclosure

Scenario 16 - Patient Being Released from Involuntary Hospitalization

Description

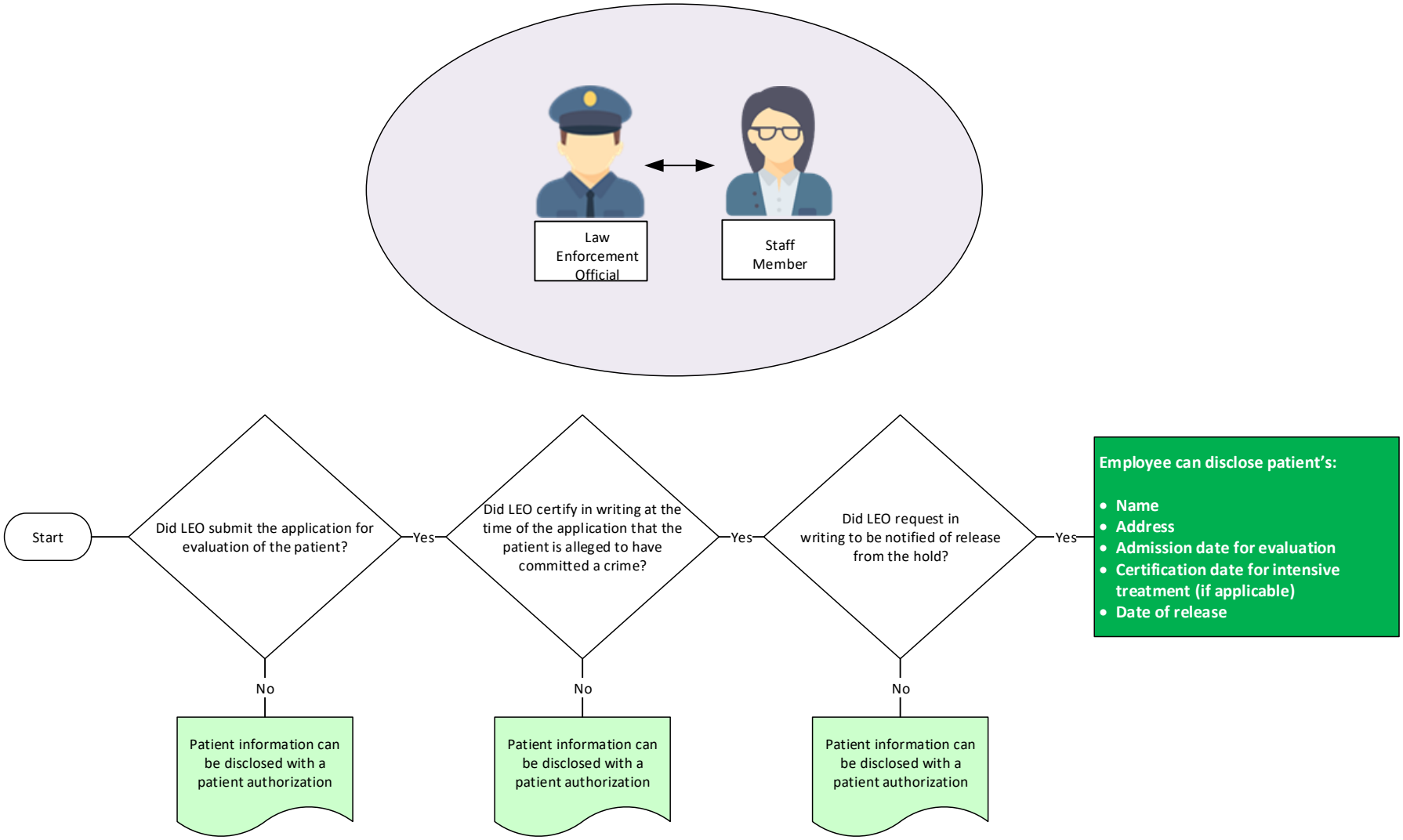
A law enforcement official (LEO) requests to be notified by an employee of a Lanterman-Petris-Short (LPS)-regulated mental health facility when an adult patient is released from an involuntary 72-hour evaluation and treatment.

What patient information can be shared with the law enforcement official?

Important Scenario Guidance Assumptions:

- Patient is an adult
- There is no patient or patient's representative authorization
- There is no court order
- Employee is authorized by the facility to access patient information
- Mental health information is regulated by LPS

Graphic - Patient Being Released from Involuntary Hospitalization



Scenario Guidance – Patient Being Released from Involuntary Hospitalization

Employees of a mental health facility regulated by LPS are limited by law in the information they can provide to a law enforcement official (such as police officer, sheriff's deputy, or detective). Without a patient authorization or a court order to release information, an employee is allowed to disclose information to notify a law enforcement official about release from a 72-hour (also applies to 14-day or 30-day) hold of a specific patient who is under criminal investigation.

The employee may notify the law enforcement official about the release of a patient who was involuntarily detained if all of the following conditions are met:

- The law enforcement official to whom the disclosure is to be made initiated the written request for the hold
- The law enforcement official also requested in writing notification of release when the hold was initiated
- The law enforcement official certified in writing that the patient is alleged to have committed a crime

The notice from the facility employee to the law enforcement official is limited to:

- Person's name
- Address
- Admission date for evaluation
- Certification date for intensive treatment (if applicable, up to 14 or 30 additional days of treatment at the discretion of the facility's professional staff)
- Date of release

[45 C.F.R. § 164.512(f); Cal. Welf. & Inst. Code § 5152.1, § 5250.1, § 5270.15, § 5328(p).]

In any case, with a valid patient or patient's representative authorization, the mental health facility may disclose the patient-identifying information.

Citations and Related Guidance

- 45 C.F.R. § 164.512(f).
- Cal. Welf. & Inst. Code § 5152.1.
- Cal. Welf. & Inst. Code § 5250.1.
- Cal. Welf. & Inst. Code § 5270.15.
- Cal. Welf. & Inst. Code § 5328(p).
- Appendix 2 - Patient Authorization for Use or Disclosure

Public Safety and Public Health Policy

Federal regulations and state statutes allow for the disclosure of health information to safeguard individuals and the public from serious threats to their health and safety. Since such threats may be identified through mental health or substance use disorder (SUD) treatment, privacy regulations and statutes address such situations.

In addition, public health departments and agencies create policies to fulfill their missions to protect the health and well-being of their constituents. Public health policy development often requires different types of patient data.

The extent behavioral health information can be shared to protect public safety and to contribute to the development of public health policy is determined by how the Health Insurance Portability and Accountability Act (HIPAA), the Confidentiality Medical Information Act (CMIA), the Lanterman-Petris-Short (LPS) Act, California Health and Safety Code § 11845.5 (HSC § 11845.5), and 42 C.F.R. Part 2 apply to the situational specifics.

Scenario 17 - Public Safety

Description

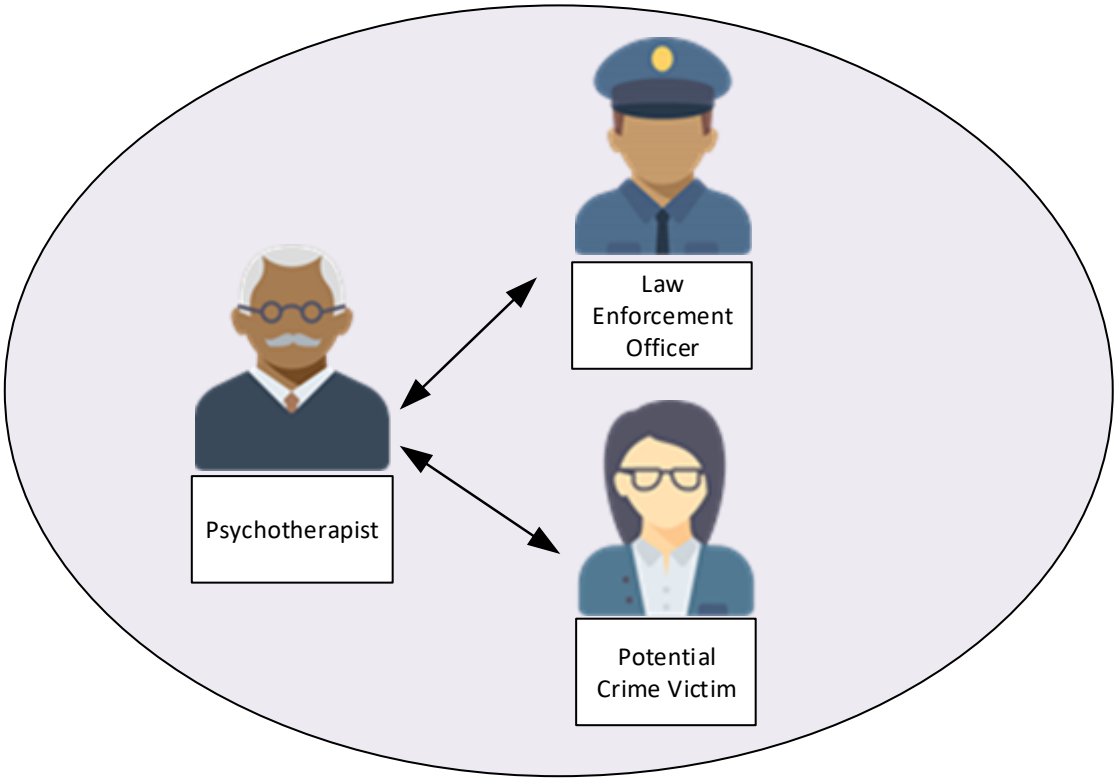
Under certain circumstances, federal and state privacy laws allow health information including patient mental health information or substance use disorder (SUD) patient-identifying information to be disclosed for the purpose of protecting public safety.

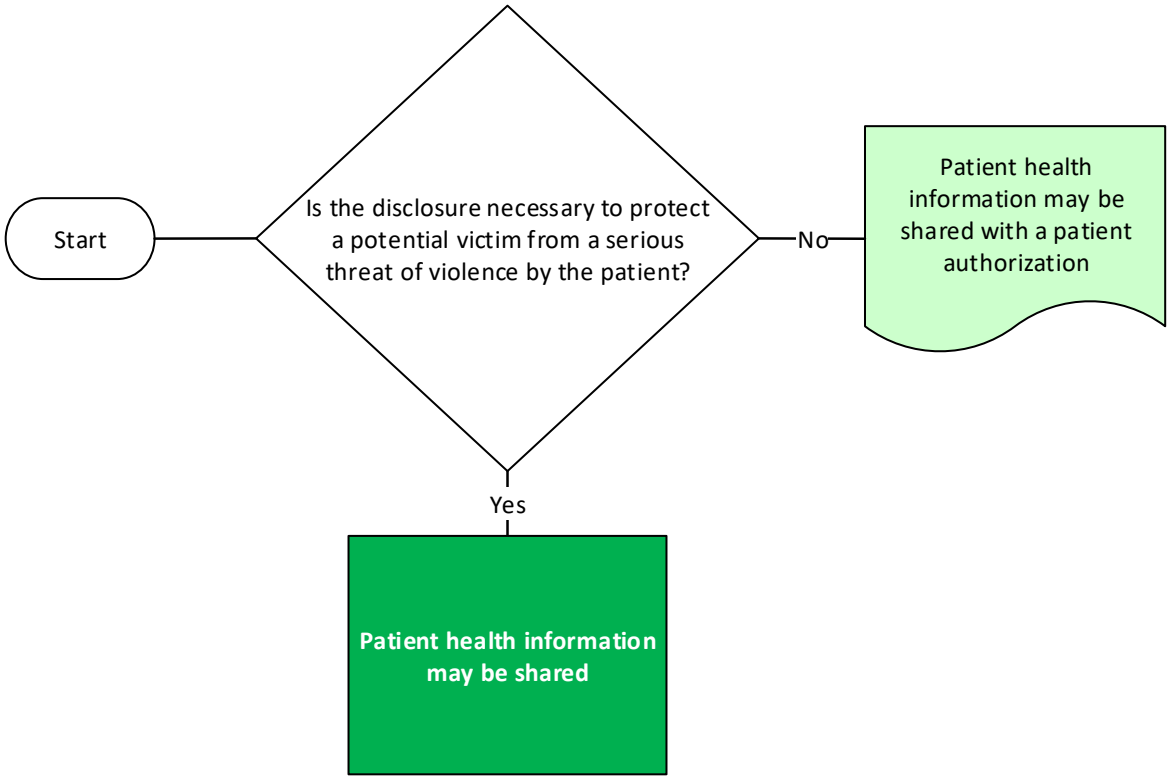
Under what circumstances can a behavioral health provider share patient health information to protect public safety?

Important Scenario Guidance Assumptions:

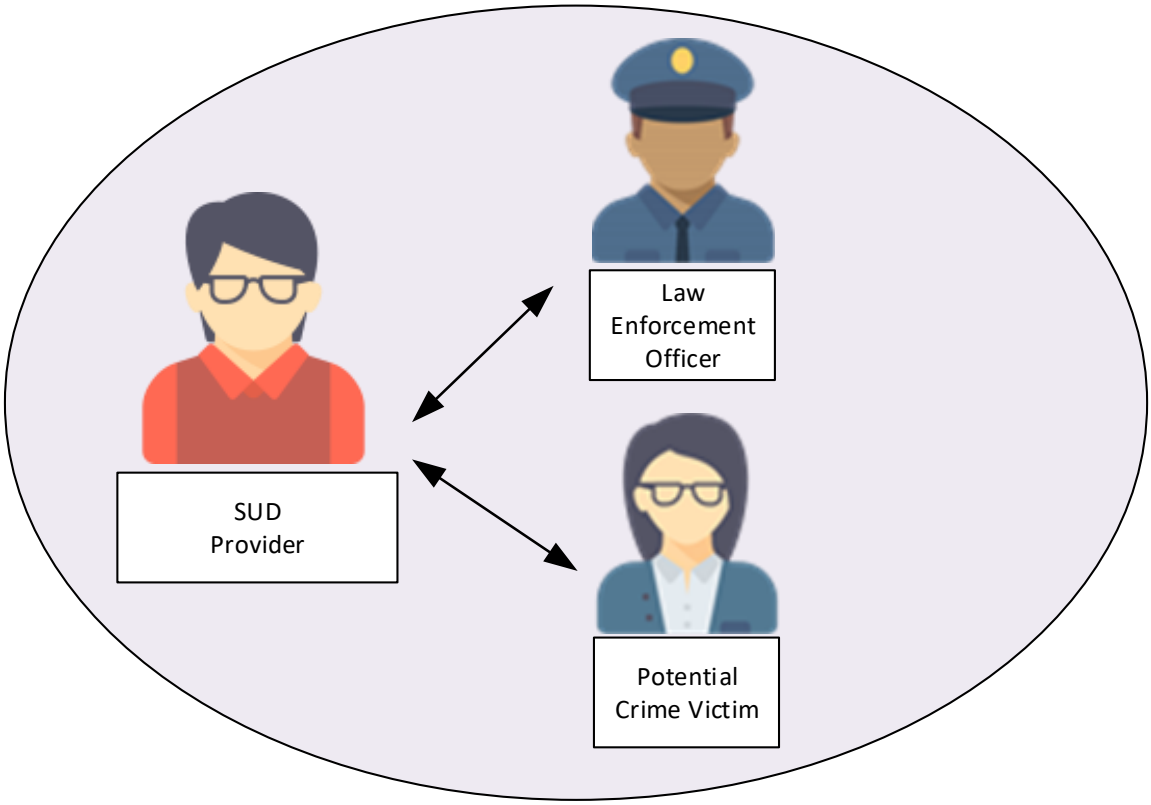
- Patient is an adult
- There is no patient or patient's representative authorization
- There is no court order
- Mental health or SUD health information is regulated by 42 C.F.R. Part 2 and the Confidentiality Medical Information Act (CMIA) or Lanterman-Petris-Short (LPS) Act

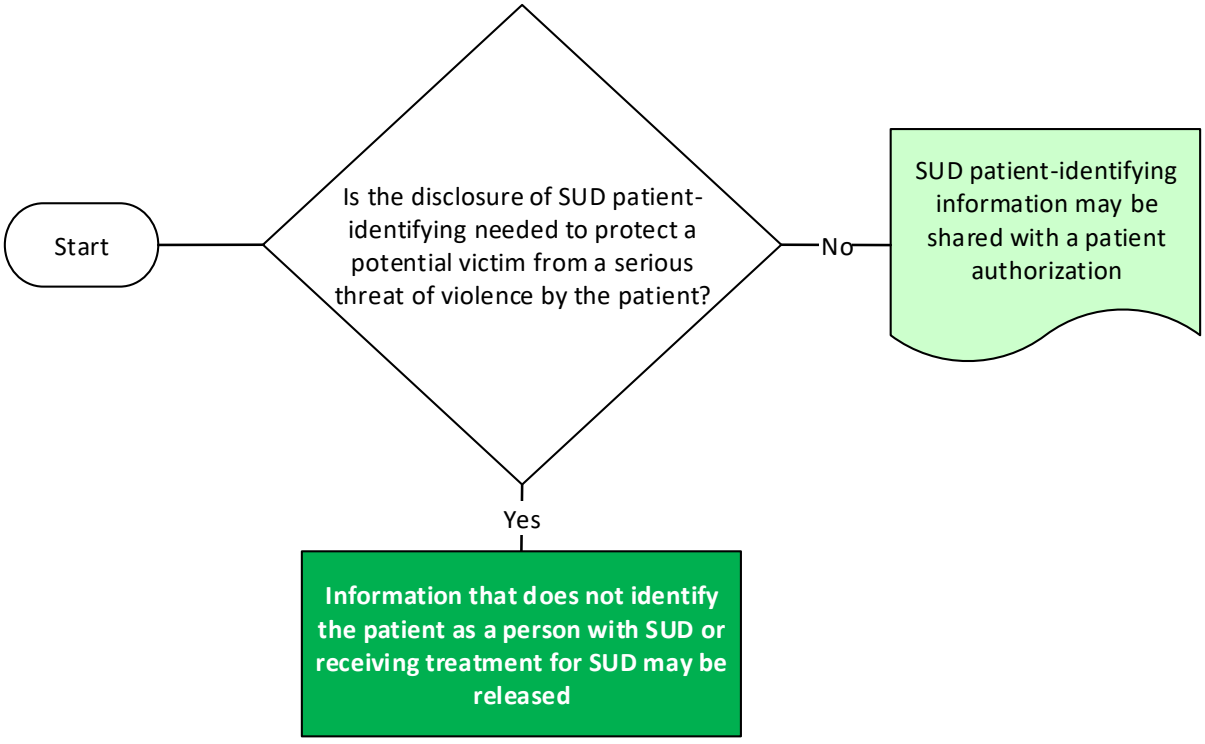
***Graphic - Public Safety* - Mental Health**





***Graphic - Public Safety* - Substance Use Disorder**





Scenario Guidance – Public Safety

A patient's psychotherapist has a responsibility per all mental health information privacy laws to warn potential victims. If the psychotherapist believes a patient presents a serious danger of violence, he or she may release limited mental health information to potential victims, law enforcement officials, or others when necessary if the psychotherapist determines the disclosure is needed to protect the health and safety of a person(s).
[45 C.F.R. § 164.512(j); Cal. Civ. Code § 56.10(c)(19); Cal. Welf. & Inst. Code § 5328(r).]

A SUD treatment provider only regulated by 42 C.F.R. Part 2 may provide information that does not identify the patient as a person with a SUD or receiving treatment for a SUD in order to warn potential victims, law enforcement, or others.
[42 § C.F.R. 2.12(a); 45 C.F.R. § 164.512(j).]

In any case, with a valid patient or patient's representative authorization, the mental health or SUD treatment facility may disclose the patient-identifying information.

Citations and Related Guidance

- 42 C.F.R. § 2.12(a).
- 45 C.F.R. § 164.512(j).
- Cal. Civ. Code § 56.10(c)(19).
- Cal. Welf. & Inst. Code § 5328(r).
- Appendix 2 - Patient Authorization for Use or Disclosure

Scenario 18 - Public Health Policy Development

Description

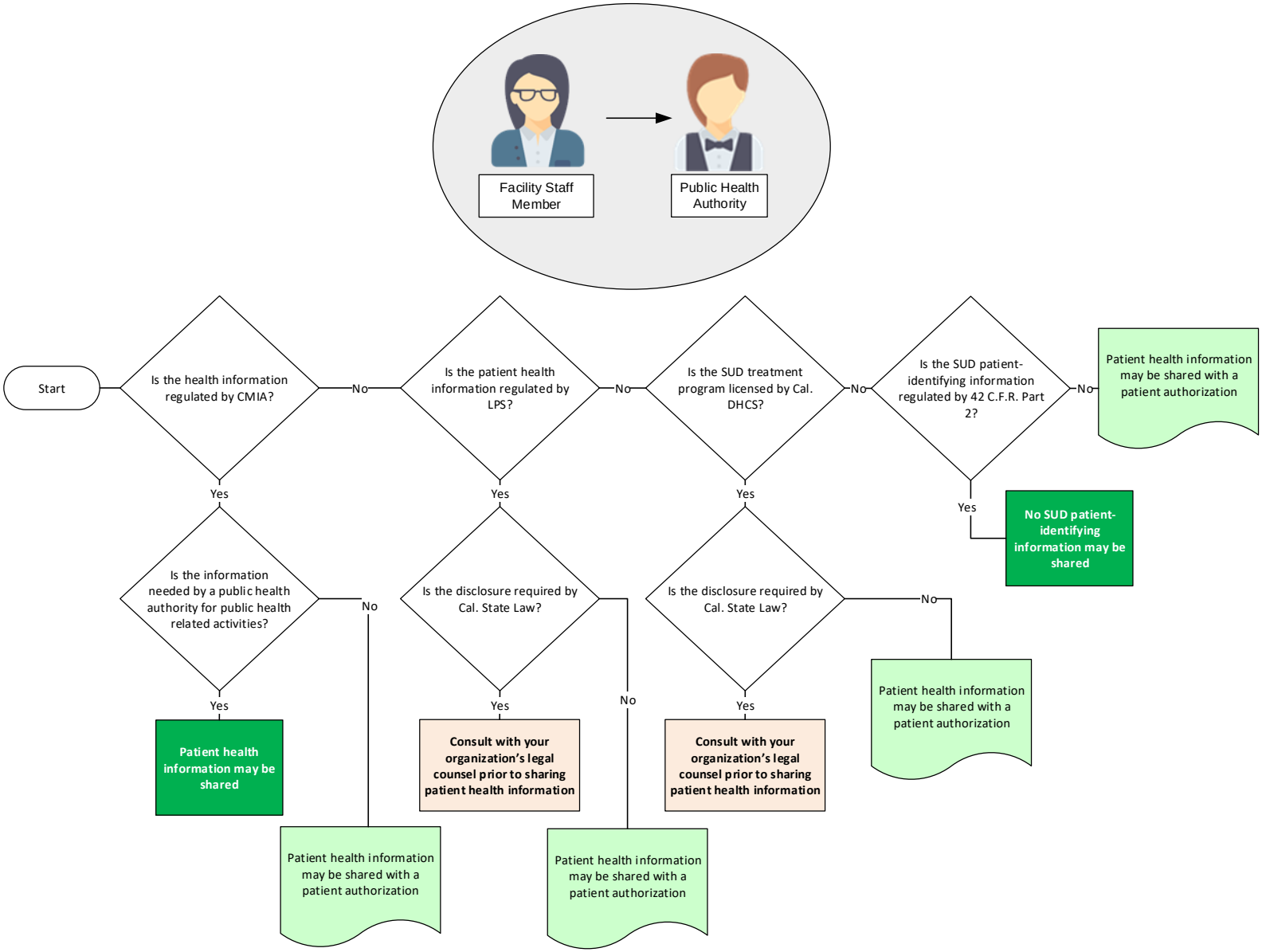
State and local health departments collect and assess the healthcare information of users of emergency department care in order to evaluate trends in emergency department use to develop strategies to achieve public health objectives (e.g., to prevent hospitalization, improve access to ambulatory care, perform surveillance for new or emerging trends in diseases and conditions). Such diagnoses and other information may include mental health information and substance use disorder (SUD) patient-identifying information.

Under what circumstances can a provider share patient behavioral health information with public health departments for the purpose of developing public health programs?

Important Scenario Guidance Assumptions:

- Patient is an adult
- There is no patient or patient's representative authorization
- There is no court order
- Exchange of information is for a purpose other than treatment

Graphic - Public Health Policy Development



Scenario Guidance – Public Health Policy Development

For purposes of determining and delivering the optimal types and locations of health programs, behavioral health information may be needed by public health authorities to achieve public health objectives. However, behavioral health information is specially-protected by federal and state laws and may be disclosed as described in the following paragraphs.

Mental Health Information

Mental health information regulated by the Health Insurance Portability and Accountability Act (HIPAA) and CMIA permit covered entities to disclose health information without authorization to public health authorities for public health-related activities not related to direct treatment. However, mental health information regulated by LPS is more restrictive and does not allow disclosure without patient authorization for public health purposes.
[45 C.F.R. § 164.512(b); Cal. Civ. Code §§ 56.10(c)(5) and (7), § 56.10(b); Cal. Welf. & Inst. Code § 5328.15.]

To further complicate LPS-regulated disclosures, other California state laws require disclosure for public health purposes. When a disclosure is required by California law and is contrary to LPS, an organization needs to determine whether the required reporting laws are specific and later enacted. In such complex cases, it is recommended that organization work with their legal departments or counsel to determine which statutes take precedence. For example, the California law may supersede the older and more general LPS regulation (e.g., Cal. Health & Safety Code § 121022 requires reporting of cases of HIV infection to local health officers).
[45 C.F.R. § 164.512(b); Cal. Welf. & Inst. Code § 5328; State Department of Public Health v. Superior Court (2015) 60 Cal.4th 940, 954.]

Substance Use Disorder Health Information

SUD patient-identifying information regulated by California Health and Safety Code (HSC) § 11845.5 (but not 42 C.F.R. Part 2) is specially protected and does not allow disclosure without patient authorization for public health purposes. To further complicate these SUD patient-identifying information disclosures, other California state laws require disclosure for public health purposes. When a disclosure is required by California law and is contrary to HSC, an organization needs to determine whether the required reporting laws are specific and later enacted. In such complex cases, it is recommended that organization work with their legal departments or counsel to determine which statutes take precedence. For example, the California law may supersede the older and more general HSC (e.g., Cal. Health & Safety Code § 121022 requires reporting of cases of HIV infection to local health officers).
[45 C.F.R. § 164.512(b); Cal. Health & Safety Code § 11845.5; State Department of Public Health v. Superior Court (2015) 60 Cal.4th 940, 954.]

SUD patient-identifying information regulated by 42 C.F.R. Part 2 is specially protected under federal law. Without patient authorization, disclosures for public health are not permitted if the disclosures identify an individual directly or indirectly as having a current or past drug or alcohol problem, or as a participant in a SUD treatment program. However, disclosure is permitted if the information is released in a way that does not identify the patient in any way as having a SUD or receiving SUD treatment.
[42 C.F.R. § 2.12, § 2.33; 45 C.F.R. §§ 164.514(a) and (b)]

In any case, with a valid patient or patient's representative authorization, disclosure of the patient-identifying information is permitted.
[42 C.F.R. § 2.31, § 2.33.]

Citations and Related Guidance

- 42 C.F.R. § 2.12.
- 42 C.F.R. § 2.31.
- 42 C.F.R. § 2.33.
- 45 C.F.R. § 164.512(b).
- 45 C.F.R. §§ 164.514(a) and (b).
- Cal. Civ. Code §§ 56.10(c)(5) and (7).
- Cal. Civ. Code § 56.10(b).
- Cal. Health & Safety Code § 11845.5.
- Cal. Welf. & Inst. Code § 5328
- State Department of Public Health v. Superior Court (2015) 60 Cal.4th 940, 954.
- Appendix 2 - Patient Authorization for Use or Disclosure

Health Information Exchange

Health information exchange (HIE) is defined as the processes and methodologies to electronically move health information among different healthcare information systems while maintaining the integrity and security of the information moved. This type of electronic exchange is usually enabled by a health information organization (HIO) that oversees and governs the exchange of the health information among participants and stakeholders to improve healthcare, usually within a specific region or community.

While HIOs offer benefits to participants and patients, they also introduce unique challenges with respect to managing privacy and security practices and policies. The HIO and its participants are responsible to comply with the laws protecting the privacy of mental health information and substance use disorder (SUD) patient-identifying information as it moves within the HIO and participants' health information systems.

Some HIOs in California simply provide the services and infrastructure to pass information between HIO participants. Other HIOs maintain databases to store data and use security safeguards that appropriately controls participant access to the data. The HIO-based scenarios that follow assume the latter approach.

Scenario 19 - Substance Use Disorder Provider to Health Information Organization

Description

A substance use disorder (SUD) provider plans to transmit SUD patient-identifying information to store it at a health information organization (HIO) in a secure environment.[26]

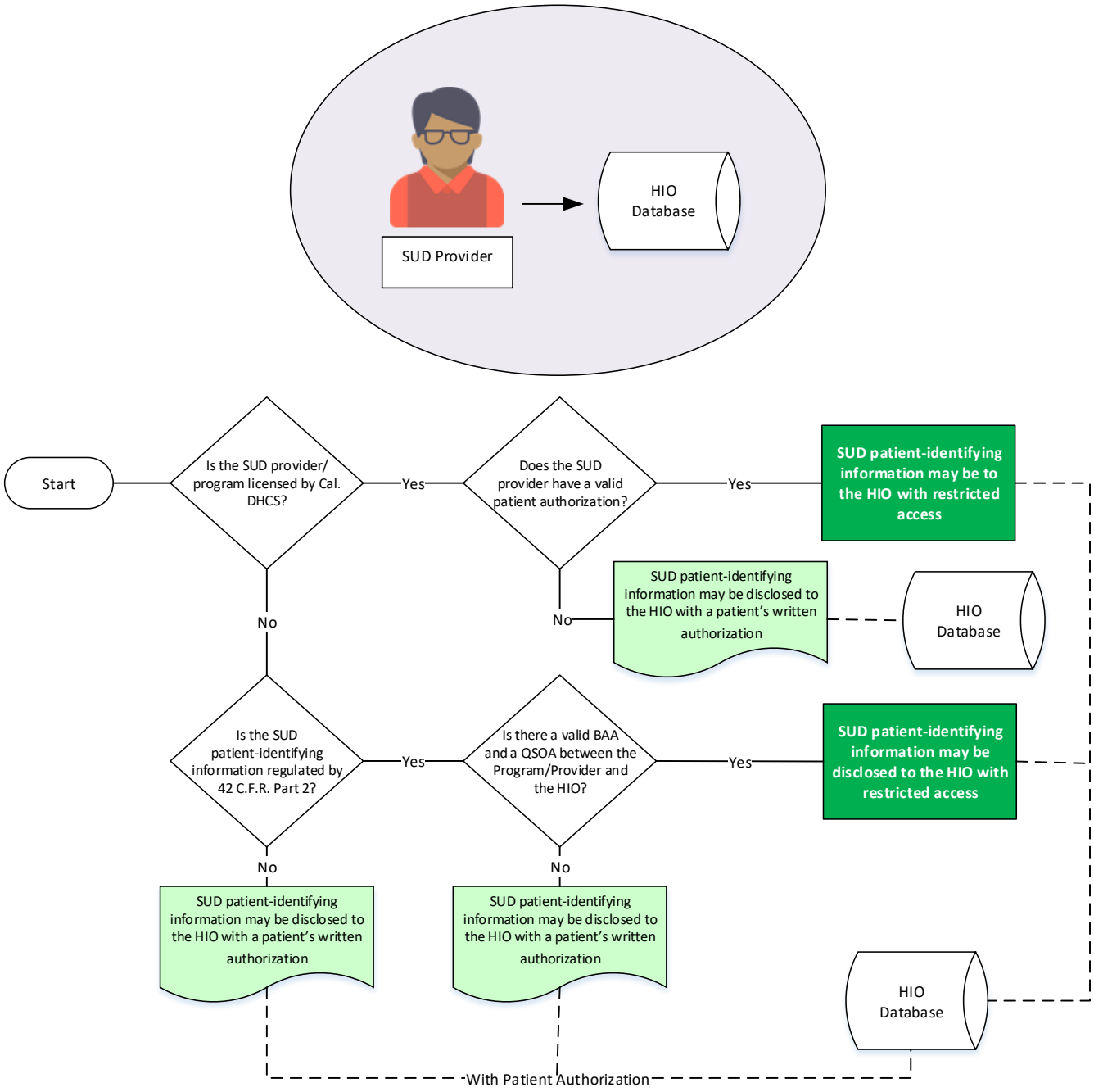
What SUD patient-identifying information can a substance use disorder provider store at a HIO?

Important Scenario Guidance Assumptions:

- Patient is an adult
- There is no patient or patient's representative authorization
- SUD health information is regulated by 42 C.F.R. Part 2 and California Health and Safety Code (HSC) § 11845.5

[26] For more information, see https://www.samhsa.gov/about-us/who-we-are/laws-regulations/confidentiality-regulations-faqs, a website maintained by Substance Abuse and Mental Health Services Administration (SAMSHA) and the U.S. Department of Health and Human Services (HHS), and the imbedded link to Frequently Asked Questions Applying the Substance Abuse Confidentiality Regulations to Health Information Exchange (HIE), an educational document developed by SAMSHA and HHS in collaboration with the Office of the National Coordinator for Health Information Technology (2010).

Graphic - Substance Use Disorder Provider to Health Information Organization



Scenario Guidance – Substance Use Disorder Provider to Health Information Organization

42 C.F.R. Part 2 applies to facilities and providers that are federally-assisted SUD treatment programs, which includes most treatment programs in California. SUD patient-identifying information is any information that would identify an individual as having a current or past SUD.

For SUD treatment providers that are licensed by the Department of Health Care Services (DHCS), health information shared with and to an HIO requires a patient or patient's representative authorization. Unlike other health information privacy laws, HSC § 11845.5 allows an authorization to broadly define how the patient's information can be shared. A valid HSC authorization must:

- Clearly state the purposes for sharing
- Be in writing and signed by the patient or patient's representative

[Cal. Health & Safety Code § 11845.5.]

However if the SUD treatment provider works for a program/facility regulated by 42 C.F.R. Part 2 that is not licensed by DHCS, the SUD treatment provider can share SUD patient-identifying information to the HIO without patient authorization but with a valid business associate agreement (BAA) and qualified service organization agreement (QSOA).
[42 C.F.R. § 2.12(a)(1); 45 C.F.R. § 164.308(b).]

Patient authorization is required to allow an HIO to disclose the 42 C.F.R. Part 2 information to other HIO affiliated members, with certain exceptions (See Scenario 21 - Substance Use Disorder Information from Health Information Organization to Health Information Exchange User).

If none of the above conditions are met, then SUD patient identifying information can be shared with a valid patient or patient's representative authorization.
[42 C.F.R. § 2.31.]

When disclosing in response to a 42 C.F.R Part 2 patient authorization, the SUD treatment provider must submit a written statement indicating the information disclosed is protected by federal law and cannot be further disclosed unless permitted by regulations. This written statement must accompany each disclosure made with patient authorization. Information disclosed electronically must have an accompanying electronic notice prohibiting re-disclosure. Under 42 C.F.R. § 2.32, one of the following statements must be used:

(1)

"This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of information in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see § 2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at §§ 2.12(c)(5) and 2.65"

- or -

(2)

"42 CFR part 2 prohibits unauthorized disclosure of these records."

[42 C.F.R. § 2.32.]

Citations and Related Guidance

- 42 C.F.R. § 2.12(a)(1).
- 42 C.F.R. § 2.31.
- 42 C.F.R. § 2.32.
- 45 C.F.R. § 164.308(b).
- Cal. Health & Safety Code § 11845.5.
- Appendix 2 - Patient Authorization for Use or Disclosure

Scenario 20 - Mental Health Provider to Health Information Organization

Description

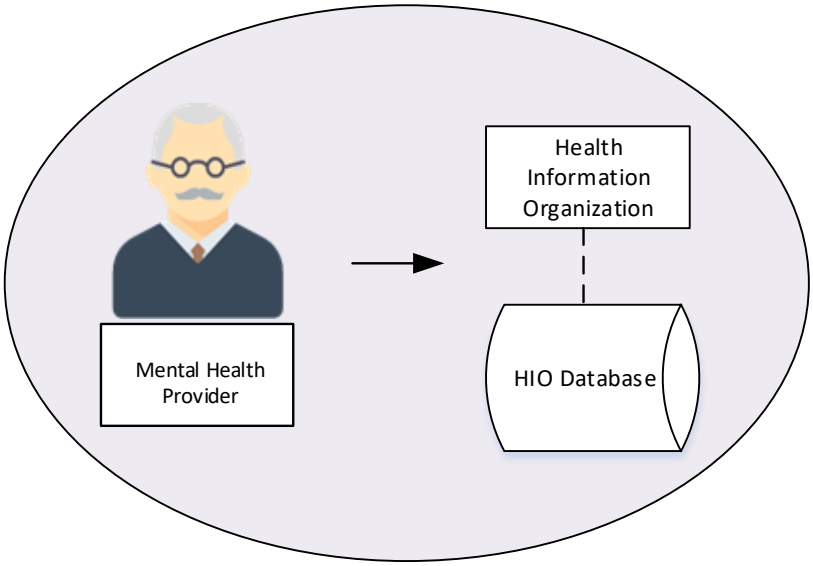
A mental health provider plans to transmit Lanterman-Petris-Short (LPS)-regulated health information to store it at a health information organization (HIO) in a secure environment.

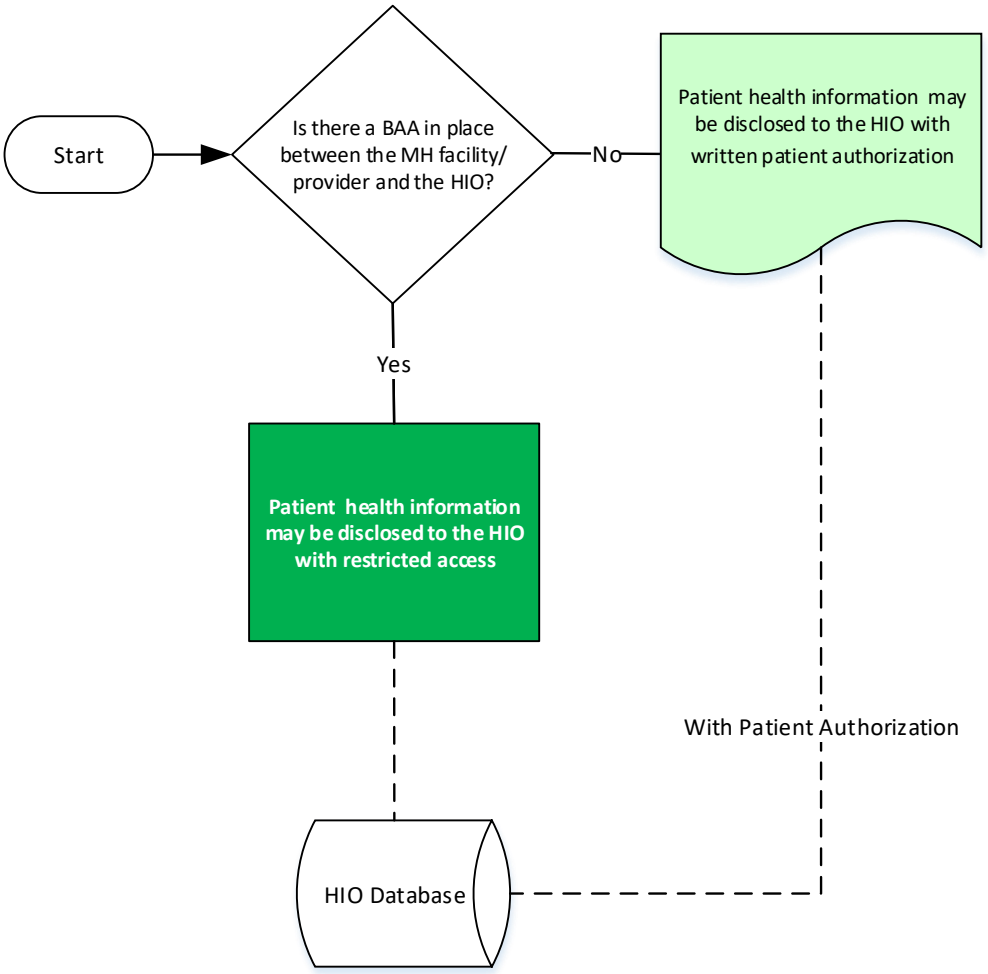
What mental health information can a mental health provider store at a HIO?

Important Scenario Guidance Assumptions:

- Patient is an adult
- There is no patient or patient's representative authorization
- There is no court order
- Mental health information is regulated by LPS

Graphic - Mental Health Provider to Health Information Organization





Scenario Guidance – Mental Health Provider to Health Information Organization

The HIO and its participants are responsible to comply with the laws protecting the privacy of mental health information as it moves within and across the HIE. Mental health information and related information are specially protected. In most circumstances, mental health information may only be shared with the authorization of the patient or patient's representative.
[45 C.F.R. § 164.502(a); Cal. Welf. & Inst. Code § 5328.]

Despite the restrictions, facilities and providers subject to LPS may share information with an HIO provided a business associate agreement (BAA) is in place.[27]
[42 U.S.C. § 17938; 45 C.F.R. § 164.308(b), § 164.314(a); Cal. Welf. & Inst. Code § 5328(a)(25).]

The HIO must implement safeguards to protect the privacy and security of the health information as required by the Health Insurance Portability and Accountability Act (HIPAA) and California law.
[45 C.F.R. § 164.306, § 164.308(a); Cal. Health & Safety Code § 1280.18.]

If the HIO does not have a BAA in place, the mental health information can be shared with a valid patient or patient's representative authorization.
[C.F.R. § 164.508(b); Cal. Welf. & Inst. Code § 5328(b).]

Citations and Related Guidance

- 42 U.S.C. § 17938.
- 45 C.F.R. § 164.306.
- 45 C.F.R. §§ 164.308(a) and (b).
- 45 C.F.R. § 164.314(a).
- 45 C.F.R. § 164.502(a).
- 45 C.F.R. § 164.508(b).
- Cal. Health & Safety Code 1280.18.
- Cal. Welf. & Inst. Code § 5328.
- Appendix 2 - Patient Authorization for Use or Disclosure

[27] Effective January 1, 2018 – until that date, this type of sharing (per Cal. Welf. & Inst. Code § 5328) is not lawful under California law.

Scenario 21 - Substance Use Disorder Information from Health Information Organization to Health Information Exchange User

Description

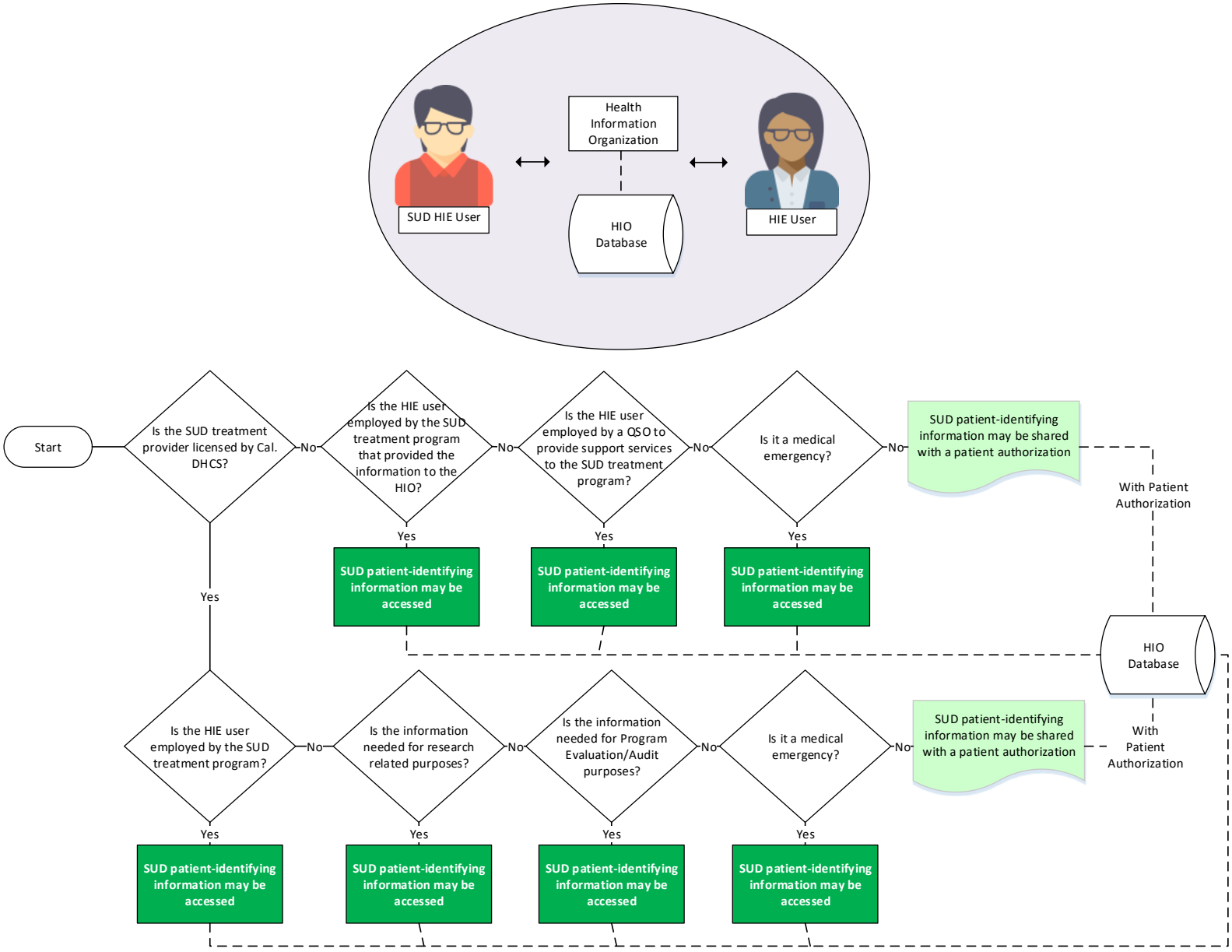
A health information exchange (HIE) user wants to access substance use disorder (SUD) patient-identifying information from a health information organization (HIO) database. The HIE user is a credentialed individual who has access to the information based on his or her roles and responsibilities. The HIO is in possession of and maintains secure health information. The HIO governs access to patient information through permissions specific to user roles.

Can a HIE user access substance use disorder patient information from an HIO?

Important Scenario Guidance Assumptions:

- Patient is an adult
- There is no patient or patient's representative authorization
- There is no court order
- There is no medical emergency
- The HIE user that provided the patient information to the HIO is a SUD health provider regulated by 42 C.F.R. Part 2

Graphic - Substance Use Disorder Information from Health Information Organization to Health Information Exchange User



Scenario Guidance – Substance Use Disorder Information from Health Information Organization to Health Information Exchange User

SUD patient-identifying information is specially protected. Disclosure without a patient authorization of any patient information that identifies an individual directly or indirectly as having a current or past drug or alcohol problem, or as a participant in a covered program, is strictly regulated for any SUD treatment program that receives federal assistance. Since federal assistance is broadly defined in regulations and includes Medicare and Medicaid (Medi-Cal)[28] payments, a large part of SUD patient-identifying information falls under 42 C.F.R. Part 2 regulations.

[42 C.F.R. § 2.12; 45 C.F.R. § 164.508(b).]

A SUD treatment provider licensed by California Department of Health Care Services (DHCS) must also comply with Health and Safety Code (HSC) § 11845.5. HSC § 11845.5 strictly regulates access to SUD patient-identifying information. Without a patient authorization, SUD patient-identify information can be accessed for the following purposes:

- By employees to provider services within the SUD treatment program
- Research
- Program evaluation and audits
- By a provider to provide treatment in a medical emergency

A valid patient or patient's representative authorization is needed to share SUD patient-identifying information for any other purpose.

[42 C.F.R. § 2.12(c), § 2.51, § 2.52, § 2.53; 45 C.F.R. § 164.308(b), § 164.506, § 164.512; Cal. Health & Safety Code § 11845.5.]

If the facility or treatment program is not licensed by DHCS, a SUD treatment provider may share information with an HIO without a patient authorization under certain conditions (see Scenario 19 – Substance Use Disorder Provider to Health Information Organization).[29] Once the patient's information is stored within an HIO's database, HIE users can access the SUD patient-identifying information without an authorization if at least one of the following conditions is met:

[28] Medi-Cal is the State of California's Medicaid program.

[29] For more information, see https://www.samhsa.gov/about-us/who-we-are/laws-regulations/confidentiality-regulations-faqs, a website maintained by Substance Abuse and Mental Health Services Administration (SAMSHA) and the U.S. Department of Health and Human Services (HHS), and the imbedded link to Frequently Asked Questions Applying the Substance Abuse Confidentiality Regulations to Health Information Exchange (HIE), an educational document developed by SAMSHA and HHS in collaboration with the Office of the National Coordinator for Health Information Technology (2010).

- The HIE user accessing the SUD patient-identifying information is employed by the program (or an organization with direct administrative control of the program) that provided the SUD patient-identifying information to the HIO.
  [42 C.F.R. § 2.12(c)(3); 45 C.F.R. § 164.506.]
- The HIE user accessing the SUD patient-identifying information is employed by a qualified service organization (QSO) to provide support services to the program. The QSO must have a business associate agreement (BAA) and a qualified service organization agreement (QSOA) in effect with the program. A QSO may not re-disclose SUD patient-identifying information without written patient authorization.
  [42 C.F.R. § 2.11, § 2.12(c)(4), § 2.32.]
- The HIE user may access patient health information for purposes permitted by the Health Insurance Portability Accountability Act (HIPAA) if the information accessed does not identify the patient in any way as having a SUD or receiving SUD treatment.
  [42 C.F.R. § 2.12(a)(1); 45 C.F.R. § 164.506, § 164.308(b), § 164.512.]
- The HIE user may access SUD patient-identifying information for purposes of responding to a medical emergency (see Scenario 8 - In the Event of Emergency).
  [42 C.F.R. § 2.51(a); 45 C.F.R. § 164.506(a).]
- An HIO that is a QSO and has a QSOA and BAA with a program may disclose SUD patient identifying information with a second program when a patient authorization requests the disclosure.
  [42 C.F.R. § 2.12(c)(4), § 2.31; 45 C.F.R. § 164.308(b), § 164.502(a), § 164.506(a), § 164.512.]

If none of the above conditions are met, the SUD patient-identifying information can be accessed by an HIE user with a valid patient or patient's representative authorization that expressly allows further disclosure. For example, the patient authorization that permits the HIO to obtain the patient's health information also expressly states that the HIO can disclose to the patient's treating physicians.

The HIO can honor a SUD patient's authorization for a general designation, such as "to all my current and past treating physicians," assuming the HIO can determine which participants have a treating provider relationship with the patient (for more information about 42 C.F.R. Part 2 authorization requirements, see Appendix 2 – Patient Authorizations for Use or Disclosure).
[42 C.F.R. § 2.31; 45 C.F.R. § 164.508(b).]

A list of entities to whom disclosures of SUD patient-identifying information were made under a general designation must be provided to the patient upon request. In addition, the HIO must capture specific information for disclosures made for medical emergencies and notify the patient's SUD treatment program.[30]

[42 C.F.R. § 2.13(d), § 2.51(c).]

When an HIO discloses SUD patient-identifying information in response to a patient authorization, a written statement indicating the information disclosed is protected by federal law and cannot be further disclosed unless permitted by regulations must accompany each disclosure. Information disclosed electronically must have an accompanying electronic notice prohibiting re-disclosure. Under 42 C.F.R. § 2.32, one of the following statements must used:

> *(1)*
>
> *"This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of information in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see § 2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at §§ 2.12(c)(5) and 2.65"*
>
> *- or -*
>
> *(2)*
>
> *"42 CFR part 2 prohibits unauthorized disclosure of these records."*

[42 C.F.R. § 2.32.]

[30] For more information, see https://www.samhsa.gov/about-us/who-we-are/laws-regulations/confidentiality-regulations-faqs, a website maintained by Substance Abuse and Mental Health Services Administration (SAMSHA) and the U.S. Department of Health and Human Services (HHS), and the imbedded link to Frequently Asked Questions Applying the Substance Abuse Confidentiality Regulations to Health Information Exchange (HIE), an educational document developed by SAMSHA and HHS in collaboration with the Office of the National Coordinator for Health Information Technology (2010).

Citations and Related Guidance

- 42 C.F.R. § 2.11.
- 42 C.F.R. § 2.12.
- 42 C.F.R. § 2.12(a)(1).
- 42 C.F.R. § 2.12(c).
- 42 C.F.R. § 2.13(d).
- 42 C.F.R. § 2.31.
- 42 C.F.R. § 2.32.
- 42 C.F.R. § 2.51.
- 42 C.F.R. § 2.51(a).
- 42 C.F.R. § 2.51(c).
- 42 C.F.R. § 2.52.
- 42 C.F.R. § 2.53.
- 45 C.F.R. § 164.308(b).
- 45 C.F.R. § 164.502(a).
- 45 C.F.R. § 164.506.
- 45 C.F.R. § 164.506(a).
- 45 C.F.R. § 164.508(b).
- 45 C.F.R. § 164.512.
- Cal. Health & Safety Code § 11845.5.
- Cal. Health & Safety Code § 11845.5(c)(1).
- Appendix 2 - Patient Authorization for Use or Disclosure

Scenario 22 - Mental Health Information from Health Information Organization to Health Information Exchange User

Description

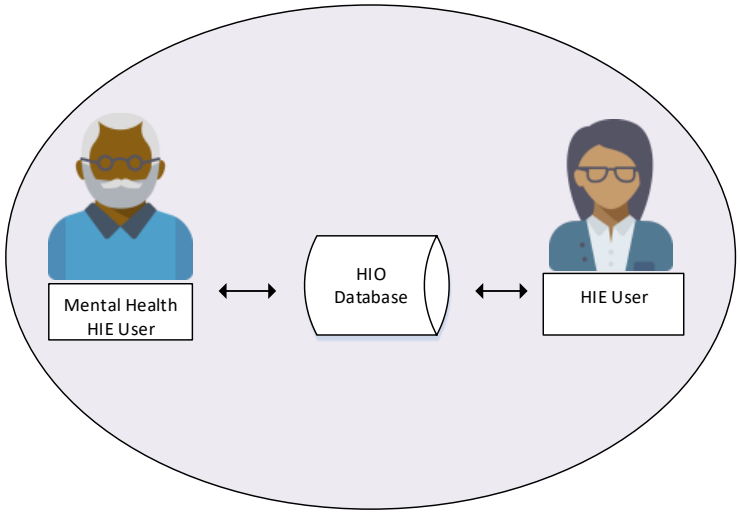
A health information exchange (HIE) user wants to access a patient's mental health information from a health information organization (HIO) database. The HIE user is a credentialed individual who has access to the information based on his or her roles and responsibilities. The HIO is in possession of and maintains secure health information. The HIO governs access to patient information through permissions specific to user roles.

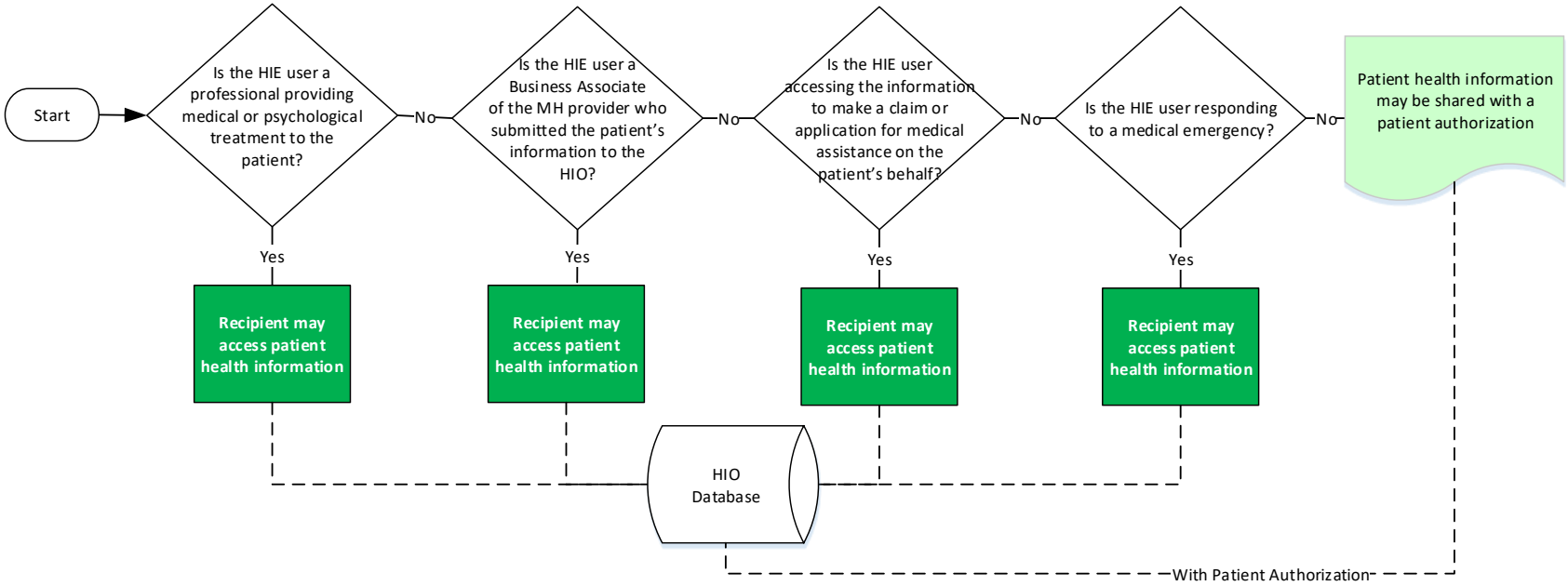
Can an HIE user access patient mental health information from an HIO?

Important Scenario Guidance Assumptions:

- Patient is an adult
- There is no patient or patient's representative authorization
- There is no court order
- The patient information the HIE user is seeking to access in the HIO data repository is regulated by the Lanterman-Petris-Short (LPS) Act

Graphic - Mental Health Information from Health Information Organization to Health Information Exchange User





Scenario Guidance – Mental Health Information from Health Information Organization to Health Information Exchange User

Mental health information is specially protected. In most circumstances in California, LPS-regulated mental health information may only be shared with the patient or patient's representative authorization.

Despite the restrictions, a mental health provider may share information with an HIO without a patient authorization under certain conditions (See Scenario 20 - Mental Health Provider to Health Information Organization). Once the patient's information is stored within an HIO's database, however, HIE users can only access the mental health information regulated by LPS[31] without an authorization if at least one of the following conditions is met:

- The HIE user accessing the mental health information is a professional providing medical or psychological treatment to the patient.
  [45 C.F.R. § 164.506; Cal. Welf. & Inst. Code § 5328(a).]
- The HIE user accessing the mental health information has a valid business associate agreement (BAA) to perform a function or activity (e.g., financial audit, IT services, quality improvement activities) on behalf of the mental health provider who submitted the patient's mental health information to the HIO. A business associate (BA) is permitted to use or disclose health information only in the manner specified in the executed BAA to protect health information per the Health Insurance Portability and Accountability Act (HIPAA) guidelines (See Scenario 10 – Quality Improvement and Scenario 11 – Audits for more information on business associates).[32]
  [45 C.F.R. § 160.103, §§ 164.308(b)(1) – (b)(3), § 164.504; Cal. Welf. & Inst. Code § 5328(a)(25).]
- The HIE user is accessing the mental health information because it is necessary to make a claim or application for medical assistance on the patient's behalf.
  [45 C.F.R. § 164.506; Cal. Welf. & Inst. Code § 5328(c).]
- The HIE user is accessing the patient's health information to respond to a medical emergency (see Scenario 8 - In the Event of Emergency).
  [45 C.F.R. § 164.506; Cal. Welf. & Inst. Code § 5238(a).]

[31] Mental health information not regulated by LPS may be disclosed as permitted by HIPAA and CMIA.
[32] Effective January 1, 2018 – until that date, this type of sharing is not lawful under California law.

When a qualified professional person accesses health information from the HIO to provide services within the treatment program that provided the information to the HIO, no patient authorization is needed.
[45 C.F.R. § 164.506, § 164.512; Cal. Welf. & Inst. Code § 5328(a).]

If none of the above conditions are met, the health information regulated by LPS can be accessed by the HIE user with a valid patient or patient's representative authorization.
[45 C.F.R. § 164.508(b); Cal. Welf. & Inst. Code § 5328(b).]

If mental health information regulated by LPS is shared for a variety of reasons including treatment and payment, the HIO must capture the disclosure to facilitate the documentation in the patient's medical record. The documentation must include the date, circumstance, names of recipient, relationship to patient, and what information was disclosed.
[Cal. Welf. & Inst. Code § 5328.6.]

Citations and Related Guidance

- 45 C.F.R. § 160.103.
- 45 C.F.R. §§ 164.308(b)(1) – (b)(3).
- 45 C.F.R. § 164.504.
- 45 C.F.R. § 164.506.
- 45 C.F.R. § 164.508(b).
- 45 C.F.R. § 164.512.
- Cal. Welf. & Inst. Code §§ 5328(a) – (c).
- Cal. Welf. & Inst. Code § 5328.6.
- Appendix 2 - Patient Authorization for Use or Disclosure

Concluding Thoughts

In conclusion, the State of California recognizes the value of sharing healthcare information when legally permissible and in the interests of the patient. Such sharing often improves coordination of care and health outcomes to the benefit of the patient. In the current complex regulatory environment, the State recognizes it can be challenging for providers to know with certainty when the sharing of healthcare information is permissible, particularly for specially protected health information such as mental health and substance use disorder patient information.

The State developed this State Health Information Guidance (SHIG) to help clarify conditions when behavioral health information may be shared without patient authorization and when disclosures are permitted by patient authorization. The SHIG is a resource to provide such clarification and encourages appropriate sharing of behavioral health patient information.

As the California healthcare landscape continues to evolve and the coordination of care for behavioral health patients continues to rise, the State's intent is to support behavioral health providers by clarifying state and federal law. As a result, the State wishes to contribute to the dialogue taking place among behavioral health stakeholders through this authoritative guidance so that patient-centric care solutions can continue to be developed in the behavioral health community.

Any questions or requests for additional information associated with this publication can be directed to:

Elaine Scordakis, M.S.
Assistant Director
California Office of Health Information Integrity (CalOHII)
1600 Ninth Street, Room 460
Sacramento, CA 95814
SHIGinformation@ohi.ca.gov

Appendix 1 – SHIG Participants

Thank You from the CalOHII Assistant Director

Edmund G. Brown Jr.
GOVERNOR

State of California
California Office of Health
Information Integrity

June 30, 2017

Dear Reader,

I am delighted to welcome you to the California State Health Information Guidance (SHIG) user community.

This document has been developed to provide non–mandatory guidance for State and non-state government entities and private sector healthcare organizations to clarify when patient information related to behavioral health can be shared per State and federal laws. We hope these clarifications contribute to improved coordination of patient care, better treatment outcomes, and lower healthcare costs.

The State Health Information Guidance was created by the California Health and Human Services Agency's Office of Health Information Integrity (CalOHII). CalOHII has statutory authority to interpret and clarify State and federal laws regarding health information privacy for State departments. Given this legislated responsibility, CHHS believes CalOHII is uniquely qualified to develop the SHIG for the benefit of healthcare organizations providing services in California. The development of the SHIG was made possible by a grant from the California Healthcare Foundation (CHCF), an independent, nonprofit philanthropy focused on opportunities to improve healthcare in California by supporting higher quality, greater efficiency, and broader access to care.

I am proud of our collaborative efforts and very grateful for the SHIG Advisory Group, CalOHII team and all the people who worked so diligently to create the SHIG. I particularly want to thank the scores of individuals who generously volunteered their time during the development process to provide subject matter expertise, rigorously review drafts, and provide their helpful review comments. The many individuals and organizations that contributed are listed in the pages that follow.

It is our sincere desire that the State Health Information Guidance helps provide much-needed direction to promote improved care coordination and information sharing between and among behavioral and physical healthcare providers.

Best Regards,

Elaine Scordakis, M.S.
Assistant Director

SHIG Stakeholder Kickoff Participants

The following companies and organizations participated in the SHIG Stakeholder Kickoff held in Sacramento September 2016. The purpose of the event was to explain the project and to solicit input to the topics to be covered in the SHIG:

- Alameda County Health Care Agency
- Blue Shield of California
- California Association of Health Information Exchanges (CAHIE)
- California Association of Health Plans (CAHP)
- California Department of Health Care Services (DHCS)
- California Department of Public Health (CDPH)
- California Department of State Hospitals (DSH)
- California Health Information Partnership & Services Organization (CalHIPSO)
- California Health and Human Services (CHHS) Agency
- California Health Care Foundation (CHCF)
- California Hospital Association (CHA)
- California Office of Health Information Integrity (CalOHII)
- California Pan-Ethnic Health Network (CPEHN)
- City and County of San Francisco
- County Behavioral Health Directors Association of California (CBHDA)
- County of Santa Clara
- Dignity Health
- LeanMD
- Manifest MedEx (formerly Cal INDEX)
- Mental Health Services Oversight & Accountability Commission (MHSOAC)
- Orion Health
- San Diego Health Connect
- San Joaquin Community Health Information Exchange (SJCHIE)
- Sutter Health

SHIG Advisory Group Members

Advisory Group members were recruited to oversee and guide the SHIG project. Advisory Group members include the following individuals and organizations.

Name	Title	Organization Name
Jana Aagaard	Senior Counsel	Dignity Health
Angela Alton	Privacy Officer	Sutter Health
Michelle Befi	Customer Solutions Officer	Easter Seals Bay Area
Erin Bernstein	Deputy City Attorney	City and County of San Francisco
Karen Boruff	Project Manager	CAHIE
Robert Cothern	Executive Director	CAHIE
Mark Elson	Executive Director	SJCHIE
Michael Freeman	Section Chief, Narcotic Treatment Program	DHCS
Steven Kite	Deputy Director	National Alliance of Mental Illness
Sara Kitterman	Privacy Officer	Sutter Health
Linnea Koopmans	Senior Policy Analyst	CBHDA
Michaela Lozano Lewis	Deputy County Counsel	County of Santa Clara
Martin Love	Chief Executive Officer	North Coast Health Improvement and Information Network
Lisa Matsubara	Privacy Attorney	California Medical Association
Arnulfo Medina	Deputy City Attorney	City and County of San Francisco
Marlies Perez	Chief, Substance Use Disorder Compliance Division	DHCS
Lois Richardson	Vice President and Counsel, Privacy and Legal Publications	CHA
Jonathan Rothman	Privacy Officer	DHCS
Jennifer Schwartz	Privacy Officer	DSH
Elaine Scordakis	Assistant Director	CalOHII
Linette Scott	Chief Medical Information Officer	DHCS
Alya Sulaiman	Legal Counsel and Privacy Director	Manifest MedEx (formerly Cal INDEX)
Catherine Teare	Associate Director	CHCF
Lee Tien	Senior Staff Attorney	Electronic Frontier Foundation
Josephine Wong	ACO Clinical Technical Senior Manager	Blue Shield of California

Advocacy Organizations Consulted

In addition to SHIG Advisory Group Members, CalOHII consulted select statewide and national advocacy organizations to inform the SHIG project. CalOHII had discussions and interviews with the following organizations and individuals.

Name	Title	Organization Name
Jack Dailey	Senior Attorney	Legal Aid Society of San Diego (Patient Advocacy)
Michelle De Mooy	Director, Privacy & Data	Center for Democracy and Technology (Privacy Advocacy)
Richard Holober	Executive Director	Consumer Federation of California (Privacy Advocacy)
Pamila Lew	Staff Attorney	Disability Rights California (Disability Advocacy)

SHIG Development Contributors

Under the direction of the California Office of Health Information Integrity (CalOHII) and the SHIG Advisory Group, the following individuals contributed significantly to the development of the SHIG publication.

Name	Title	Organization Name
Elaine Scordakis	Project Director	CalOHII
Jennifer Schwartz	Legal Subject Matter Expert	DSH
Daniel Glaze	Project Manager/ Scrum Master	Elyon Enterprise Strategies
Jeff Turk	Content Developer	Business Advantage Consulting
Jennifer Rider	Content Developer	Business Advantage Consulting
Rick Lytle	Content Editor/Team Lead	Business Advantage Consulting

Additional Organizations Consulted

CalOHII and the SHIG Advisory Group greatly appreciate the services of individuals and organizations who also contributed to the development of the SHIG by consulting with the development team and/or reviewing sections of the document.

Name	Title	Organization Name
Lisa Ashton	Strategic Market Director	Johnson & Johnson Health Care Systems, Inc.
Lauren Block	Program Director, Health Division	National Governors Association Center for Best Practices
Allie Budenz	Associate Director of Quality Improvement	California Primary Care Association
Mary Ellyn Gormley	Assistant County Counsel	Office of the County Counsel, County of Alameda
Brian Hansen	Health Program Specialist	DHCS
Elana Lopez-Gusman	Executive Director	American College of Emergency Physicians
Ashley Mills	Senior Researcher	California Mental Health Services Oversight and Accountability Commission
Karen Morphy	Chief Strategy Officer	Elyon Enterprise Strategies
Cheri Silveira Moliere	Director, Risk Management	Xpio Group Health, LLC
Mark Wilson	Senior Consultant	Business Advantage Consulting

Appendix 2 - Patient Authorization for Use or Disclosure

Patient Authorization Summary

Although state statutes and federal regulations provide special protections for behavioral health information, they also provide flexibility for disclosing and sharing the health information with a patient authorization. If a patient has the capacity to provide explicit or implicit consent or instruction, he or she generally has the right to authorize to whom his or her behavioral health and general medical information can be disclosed. A legally competent adult patient may provide permission for a provider or organization to share his or her personal health information, including mental health information and substance use disorder (SUD) patient-identifying information, for a wide range of purposes, including coordination of care and social services. Health providers are encouraged to discuss with patients why some forms of sharing might be in the patient's best interests. Informed disclosure decisions by patients may be beneficial to the therapeutic relationship.

As defined by health information privacy laws, a provider generally has responsibility to act on a patient's decision to authorize or not authorize disclosure of their health information in situations involving mental health or SUD. In some situations, questions may arise concerning whether the patient has the capacity to provide consent and if not, who is able to give informed consent for those individuals. Providers should seek legal counsel in such situations.

Depending upon the type of health information being released, authorization form requirements differ by law. The Health Insurance Portability and Accountability Act (HIPAA), Lanterman-Petris-Short (LPS) Act, Health and Safety Code (HSC) § 11845.5, Confidentiality of Medical Information Act (CMIA), and 42 C.F.R. Part 2 each define required (but not identical) elements of a consent form. The requirements for a compliant authorization form from each statute or regulation are described below. Keep in mind, valid authorizations must include HIPAA as well as the requirements associated with CMIA-, LPS- or SUD-regulated entities.

Authorization Form Requirements

HIPAA Authorization Form Requirements

The core elements of a valid HIPAA authorization must include:

- Meaningful description of the information to be disclosed
- Name of the person/entity authorized to make the disclosure
- Name of the person/class of persons/entity of the recipient of the information
- Description of the purpose of the disclosure
- Expiration date or an expiration event that relates to the individual
- Signature of the patient or their patient's representative

[45 C.F.R. § 164.508(c).]

CMIA-Regulated Authorization Form Requirements

When a patient or patient's representative authorization for a disclosure of mental health information is required for CMIA-regulated entity, the form must include the HIPAA core elements (above) as well as the following (where different):

- No smaller than 14-point type
- Signed and dated by the patient or patient's representative, or spouse, or beneficiary/personal representative of a deceased person
- Specific uses and limitations on the types of medical information to be disclosed
- Name or functions of providers of health care, health care service plan, contractor, or pharmaceutical company that may disclose information
- Name or functions of persons or entities authorized to receive medical information
- Specific uses and limitations on the use of the medical information by persons or entities authorized to receive the information
- Specific date after which the authorization is no longer valid
- Advises person signing of their right to receive a copy of the authorization

[Cal. Civ. Code § 56.11.]

LPS-Regulated Authorization Form Requirements

When a patient or patient's representative authorization for a disclosure of mental health information is required for a LPS-regulated entity, the form must include the HIPAA core elements (above) as well as the following (where different):

- Purpose of the disclosure
- Information to be released
- Name of the agency or individual to whom information will be released
- Name of the responsible individual at the mental health facility who has authorization to release the information requested
- Signed by the patient or patient's representative

[Cal. Welf. & Inst. Code § 5328.7.]

SUD- and HSC-Regulated Authorization Form Requirements

When a patient or patient's representative authorization for a disclosure of SUD patient-identifying information is required for a 42 C.F.R. Part 2 regulated entity licensed by the California Department of Health Services, the form must include the HIPAA core elements (above) as well as the following elements (where different):

- Name of the patient
- Specific name or entity making the disclosure
- Recipient of the information
- Purpose of the disclosure
- How much and what kind of information will be released, including an explicit description of the substance use disorder information that may be disclosed
- Indicate that the patient understands he or she may revoke the authorization at any time – orally or in writing
- Date or condition upon which the authorization expires, if not revoked earlier
- Date the authorization form was signed
- Signature of the patient or their representative

[42 C.F.R. § 2.31, § 2.33 and Cal. Health & Safety § 11845.5.]

Documentation Requirements for Authorized Disclosures

Specific documentation must be created and maintained for disclosures of mental health and SUD patient records, even when legally authorized by the patient.

Records Protected by LPS

When LPS-regulated[33] mental health information is shared for treatment, elopement (meaning departs health care facility unsupervised or undetected), etc., the disclosure must be documented in the patient's medical record and include the following elements:

- Date
- Circumstance
- Names of recipients
- Relationship to patient
- Persons and agencies to whom such disclosure was made
- Specific information was disclosed

[Cal. Welf. & Inst. Code § 5328.6.]

Records Protected by 42 C.F.R. Part 2

Upon request, patients who have consented (using a general designation) to disclose their SUD patient-identifying health information must be provided a list of entities to whom their information has been disclosed. Under 42 C.F.R. Part 2 regulations, a patient may use the designation of an individual(s) and/or entity(-ies) (e.g., "my past and current treating physicians"). Requests must be in writing and limited to disclosures within the past two years. Each document disclosure must include:

- Name(s) of the entity(ies)
- Date of the disclosure
- Brief description of the SUD patient-identifying information disclosed

[42 C.F.R. § 2.13(d), § 2.31(a)(4)(iii)(B)(3).]

Re-Disclosure of 42 C.F.R. Part 2 Regulated Patient Information

Behavioral health information regulated by 42 C.F.R. Part 2 is specially protected and, once received, may only be re-disclosed under specific conditions. SUD patient-identifying information that has been disclosed in response to a patient authorization must have an additional patient authorization to be re-disclosed.

[42 C.F.R. § 2.31, § 2.32.]

[33] See **Who Is Subject to LPS**

One of the following written statements must accompany each disclosure of SUD patient-identifying information made with patient authorization:

> *(1)*
>
> *"This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of information in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see § 2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at §§ 2.12(c)(5) and 2.65"*
>
> *- or -*
>
> *(2)*
>
> *"42 CFR part 2 prohibits unauthorized disclosure of these records."*

Appendix 3 - Additional Resources

The State Health Information Guide (SHIG) has been posted on the California Office of Health Information Integrity (CalOHII) website as a public resource.[34] The online SHIG will be available for as long as the public and the behavioral health community find it useful. CalOHII is not responsible to keep the SHIG current or maintain its sustainability.

Issues and Subjects Not Addressed in SHIG

The current version of the SHIG only provides clarifications relating to disclosure and exchange of behavioral health information. A significant number of issues and subjects relating to other specially-protected health information were identified as complex and at times confusing for providers. Fortunately, the SHIG is designed to be a virtual binder that can be expanded to include other topics. Should funding and resources become available, useful future topics for clarification could include, but are not limited to, any or all of the following:

- HIV/AIDS
- Minors' Health Information
- Foster Children Health Information
- Developmental Services
- Criminal Justice and Corrections Patient Health Information
- Genetic Information
- Sharing within and between Health Plans, Health Information Exchanges, Health Information Organizations, Health Care Organizations, Accountable Care Organizations (ACO)
- Privacy and Electronic Health Records
- Electronic Signatures

Other Resources

Fine Print: Rules for Exchanging Behavioral Health Information in California

A white paper published in July 2015, sponsored by the California Health Care Foundation, describes misconceptions about federal and state laws governing disclosure of behavioral health information. A link to the document as a PDF file follows:

Fine Print: Rules for Exchanging Behavioral Health Information in California in 2015

[34] http://www.chhs.ca.gov/OHII/Pages/default.aspx

Getting the Right Information to the Right Health Care Providers at the Right Time – A Road Map for States to Improve Health Information Flow between Providers

This National Governor's Association Road Map[35] document describes market and legal barriers that inhibit the exchange of patient health information and outlines approaches for states to provide better care coordination through patient information exchange, including publication of regulatory guidance. Following is a link to the entire document, with a one-page summary provided on the next page:

Getting the Right Information to the Right Health Care Providers at the Right Time

[35] Johnson, K., Kelleher, C., Block, L., & Isasi, F. (2016) Getting the Right Information to the Right Health Care Providers at the Right Time: A Road Map for States to Improve Health Information Flow Between Providers. Washington, DC: National Governors Association Center for Best Practices.

Getting the Right Information to the Right Health Care Providers at the Right Time: A Road Map for States to Improve Health Information Flow Between Providers

The Importance of Health Information Flow Between Providers:

Exchange of clinical health information is critical to ensuring that providers have the best information possible when making decisions about patient care, minimizing repetition and errors, ensuring high-quality transitions of care and lowering costs.

The Problem:

The United States has experienced significant advancements in medical diagnostics and treatments for complex health problems in recent years; however, health care still lags far behind other sectors of the economy in the exchange of information to improve efficiency. Due to a variety of legal and market-based barriers, exchange of clinical health information between providers often does not occur, or occurs in a manner that does not allow for meaningful use of data to support optimal patient care.

The Purpose:

The road map was developed to activate governors and their senior state leaders to drive forward policies that support the seamless flow of clinical patient health care information between providers while protecting patient privacy, as a step toward nationwide interoperability.

The Audience:

The road map was developed for:

- Governors
- Governors' senior health policy officials
- State lawmakers
- State health information technology officials
- State legislative counselors

Key Content:

The road map provides state leaders:

- A series of five steps to identify and address the major barriers to clinical information flow
- Legal and market-based strategies to address barriers and a high-level assessment of effectiveness of the strategies
- State examples of successful strategies
- Measures to evaluate progress

For Additional Information:

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NGA.ORG NatlGovsAssoc NationalGovernorsAssociation

Appendix 4 - Definitions

Term	Definition
Access	*IT related:* The ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any system resource. *[source: 45 C.F.R. § 134.304.]* *Non-IT related*: The right of an individual, or his or her patient's representative, to inspect and/or obtain a copy of the individual's health information. *[source: 45 C.F.R. § 164.524.]*
Authorization	A detailed document that gives covered entities permission to use health information for specified purposes which are generally other than treatment, payment or healthcare operations, or to disclosed health information to a third party specified by the individual. Relates to past, present, or future physical or mental conditions. *[source: 42 C.F.R. § 2.31, § 2.33; 45 C.F.R. § 164.508; Cal. Civ. Code § 56.11; Cal. Health & Safety Code § 11845.5(b); Cal. Welf. & Inst. Code § 5328.7.]*
Availability	The reliability and accessibility of information assets to authorized personnel in a timely manner. *[source: California Department of Technology website https://cdt.ca.gov/security/technical-definitions/.]*
Behavioral Health	For purposes of the State Health Information Guidance (SHIG), behavioral health includes mental health and substance use disorder (SUD) information. *[source: Created by the SHIG team.]*
Behavioral Health Information	SUD patient-identifying information regulated by 42 C.F.R. Part 2 and/or California Health and Safety Code § 11845.5 and/or mental health information regulated by Lanterman-Petris-Short (LPS) or Confidentiality of Medical Information (CMIA). *[source: 42 C.F.R. Part 2; Cal. Civ. Code § 56.30; Cal. Health & Safety Code § 11845.5; Cal. Welf. & Inst. Code § 5328.]*
Business Associate (BA)	A person or entity that performs certain functions or activities that involve the use or disclosure of health information on behalf of, or provides services to, a covered entity. Business associates may include, but not limited to: • organizations that provide services (e.g., claims processing, clearing houses, data analysis, utilization review, quality assurance, billing, legal) on behalf of a covered entity where access to health information is required • a person or organization "that offers a personal health record to one or more individuals on behalf of a covered entity…"

Term	Definition
	• "subcontractor that creates, receives, maintains, or transmits protected health information on behalf of the business associate…" A member of the covered entity's workforce is not a business associate. *[source: 45 C.F.R. § 160.103 (paraphrased).]*
Business Associate Agreement (BAA)	A contract between a HIPAA-covered entity and a HIPAA business associate. The contract protects health information in accordance with HIPAA guidelines. *[source: 45 C.F.R. § 164.504(e) (paraphrased).]*
Confidentiality	A security and privacy principle that works to ensure that information is not disclosed to unauthorized persons. *[source: 45 C.F.R. §164.304; California Department of Technology website https://cdt.ca.gov/security/technical-definitions/.]*
Coordination of Care	The deliberate organization of healthcare and related services between two or more providers to facilitate the appropriate delivery of healthcare services. *[source: Agency for Healthcare Research and Quality website https://www.ahrq.gov/professionals/prevention-chronic-care/improve/coordination/index.html (paraphrased).]*
Covered Entity	The following individuals or organizations that directly handle health information: • a health plan • a healthcare clearinghouse • a health provider who transmits any health information in electronic form in connection with a standard transaction covered by HIPAA *[source: 45 C.F.R. § 160.103.]*
Data Use Agreement (DUA)	An agreement required by HIPAA, which must be entered into before there is any use or disclosure of a limited data set to a third party. A DUA must: • establish the permitted uses and disclosures of the limited data set; • establish who is permitted to use or receive the limited data set; and • provide that the recipient will: o not use or disclose the information other than as permitted by the DUA or as otherwise required by law; o use appropriate safeguards to prevent uses or disclosures of the information that are inconsistent with the DUA; o report to the covered entity any use or disclosure of the information, in violation of the DUA, of which it becomes aware; o ensure that any agents to whom it provides the limited data set agree to the same restrictions and conditions; and o not attempt to identify or contact the individual. *[source: 45 C.F.R. § 164.514(e)(4).]*

Term	Definition
De-identified Information	Information redacted to remove any identifying information and prevent the information from being used to re-identify the patient. This process of de-identification mitigates privacy risks to patients and thereby supports the secondary use of data for comparative effectiveness studies, policy assessment, life sciences research and other endeavors. [*source: 45 C.F.R. § 164.514(a); HHS website https://www.hhs.gov/hipaa/for-professionals/privacy/special-topics/de-identification (paraphrased).]*
Disclose	The release, transfer, dissemination, or to otherwise communicate all or any part of any record orally, in writing, or by electronic or any other means to any person or entity. *[source: 45 C.F.R. § 160.103 (paraphrased).]*
Federal Assistance	A program is considered to be federally assisted if: (1) It is conducted in whole or in part, whether directly or by contract or otherwise by any department or agency of the United States (but see paragraphs (c)(1) and (2) of this section relating to the Department of Veterans Affairs and the Armed Forces); (2) It is being carried out under a license, certification, registration, or other authorization granted by any department or agency of the United States including but not limited to: (i) Participating provider in the Medicare program; (ii) Authorization to conduct maintenance treatment or withdrawal management; or (iii) Registration to dispense a substance under the Controlled Substances Act to the extent the controlled substance is used in the treatment of substance use disorders; (3) It is supported by funds provided by any department or agency of the United States by being: (i) A recipient of federal financial assistance in any form, including financial assistance which does not directly pay for the substance use disorder diagnosis, treatment, or referral for treatment; or (ii) Conducted by a state or local government unit which, through general or special revenue sharing or other forms of assistance, receives federal funds which could be (but are not necessarily) spent for the substance use disorder program; or (4) It is assisted by the Internal Revenue Service of the Department of the Treasury through the allowance of income tax deductions for contributions to the program or through the granting of tax exempt status to the program. *[source: 42 C.F.R. § 2.12.]*

Term	Definition
Federally Qualified Health Center (FQHC)	Community-based and patient-directed organization that serves a population that is medically underserved by providing comprehensive primary health services. These organizations must qualify for funding under Section 330 of the Public Health Service Act. *[source: Created by the SHIG team.]*
Health Information	Any name in combination with any other information related to the provision of health care that can lead a person to reasonably identify the patient. This definition incorporates and synthesizes State of CA and federal definitions, including: • Protected Health Information • Electronic Health Information • Individually Identifiable Health Information • Personal Information • Medical Information • Confidential and Private Information Special note: Health Information as used in the SHIG does not include information and records covered by other federal or state laws regarding substance use disorder treatment records, mental/behavioral health records, developmental services records, HIV, genetic information. *[source: Statewide Health Information Policy Manual (SHIPM).]*
Health Information Exchange (HIE)	The capability to electronically move health information among disparate healthcare information systems, and maintain the meaning of the information being exchanged. The goal of HIE is to facilitate access to, and retrieval of, clinical data to provide safe, timely, efficient, effective, equitable and patient-centered care. *[source: Health Information and Management Systems Society (HIMSS) website http://www.himss.org/library/health-information-exchange.]*
Health Information Organization (HIO)	An organization that oversees and governs the exchange of health information among stakeholders within a defined geographic area, for improving health and care in that community. *[source: HIMSS website http://www.himss.org/library/health-information-exchange.]*

Term	Definition
Health Oversight Activities	The oversight of the healthcare system (public or private), as well as government benefit programs, entities subject to government regulatory programs and entities subject to civil rights laws. These oversight activities include: • audits • civil, administrative or criminal investigations • inspections • licensure or disciplinary action • civil, administrative or criminal proceedings or actions *[source: 45 C.F.R. § 164.512(d)(1) (paraphrased).]*
Health Oversight Agency	A person, or entity, at any level of the federal, state, local, or tribal government that oversees the healthcare system or requires health information to determine eligibility, or compliance, or to enforce civil rights laws. Examples include: • State and County licensing agencies • Department of Justice and their civil rights enforcement activities • State Medicaid fraud control units • Food and Drug Administration *[source: 45 C.F.R. § 164.501 (paraphrased).]*
Health Plan	An individual or group plan that provides, or pays the costs of, healthcare and includes the following, singly or in: • a group plan, a health insurance issuer, a healthcare service plan • an HMO • Part A, B or D of the Medicare program, or a supplemental policy thereof • a long-term care policy excluding a nursing home fixed indemnity policy • an employee welfare benefit plan • a healthcare program for uniformed services • a veterans healthcare program • an Indian Health Services program • the Federal Employees Health Benefits Program • an approved state child health plan • a Medicare Advantage program • a high risk pool established under state law to provide health insurance coverage or comparable coverage • any other individual or group plan or combination of individual or group plans that provides or pays for the cost of medical care *[source: 45 C.F.R. § 160.103; 42 U.S.C. 300gg-91(a)(2); Cal. Civ. Code § 56.05.]*

Term	Definition
Health Provider	Any person or organization that furnishes, bills, or is paid for healthcare in the normal course of business. Examples include, but not limited to: • doctors • clinics • psychologists • dentists • chiropractors • nursing homes • pharmacies *[source: 45 C.F.R. § 160.102, § 160.103.]*
Healthcare Operations	Activities relating to covered functions of a business associate, healthcare clearinghouse, health plan, health provider or hybrid entity. Including, but not limited to: • conducting quality assessment and improvement activities; patient safety activities; population-based activities relating to improving health or reducing healthcare costs, protocol development, case management and care coordination, contacting of health providers and patients with information about treatment alternatives; and related functions that do not include treatment • licensing and accreditation • reviewing the competence or qualifications of healthcare professionals, evaluating practitioner and provider performance, health plan performance, training of non-healthcare professionals, accreditation, certification, licensing, or credentialing activities • underwriting, enrollment, premium rating, and other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for healthcare • conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs • business planning and development • business management and general administrative activities of the entity *[source: 45 C.F.R. § 164.501; Cal. Civ. Code §56.10(c).]*
Integrity	The property that data or information have not been altered or destroyed in an unauthorized manner. *[source: 45 C.F.R. § 164.304.]*

Term	Definition
Law Enforcement Official	An officer or employee of any agency or authority of the United States, a state, a territory, a political subdivision or a state or territory, or an Indian tribe, who has arrest powers. Examples include, but not limited to: • peace officers • district attorneys • sheriffs *[source: 45 C.F.R. § 164.103; Cal. Penal Code § 830, § 834.]*
Limited Data Set	Health information that excludes the following direct identifiers of the patient, or of relatives, employers, or household members of the patient: • names • postal address information, other than town or city, state, and zip code • telephone and fax numbers • electronic mail addresses • Social Security Numbers • medical record numbers • health plan beneficiary numbers • account numbers • certificate / license numbers • vehicle identifiers and serial numbers, including license plate numbers • device identifiers and serial numbers • web universal resource locators (URLs) • internet protocol (IP) address numbers • biometric identifiers, including finger and voice prints • full face photographic images and any comparable images *[source: 45 C.F.R. § 164.514(e)(2).]*
Mental Health Information	Patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. Mental health records include, but is not limited to, all alcohol and drug abuse records. *[source: Cal. Civ. Code § 56.30; Cal. Health & Safety Code § 123105(b); Cal. Welf. & Inst. Code § 5328.]*
Minimum Necessary	The amount of information, to the extent necessary, to accomplish the intended purpose of a use, disclosure, or request. *[source: 45 C.F.R. § 164.502(b), § 164.514(d).]*
Organized Health Care Arrangement	A clinically integrated care setting in which individuals typically receive healthcare from more than one health provider. *[source: 45 C.F.R. § 160.103 (paraphrased).]*

Term	Definition
Patient's Representative	A person who: • has the authority under law to make healthcare decisions for another person, or • has the authority to administer the estate of a deceased person (including executor) A provider using clinical judgment may choose not to treat an individual as the patient's representative, if there is a reasonable belief that: • the individual has or will abuse/neglect/treat the patient with violence, or • may endanger the patient if the information is provided to the individual; and • it would not be in the best interest of the patient to treat the patient as the patient's representative. *[source: 45 C.F.R. § 164.502(g) and HHS website http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/personalreps.html.]*
Payment	The activities undertaken to obtain or provide reimbursement for the provision of healthcare (including billing, claims management, determination of eligibility for health benefits, justification of charges, utilization review). *[source: 45 C.F.R. § 164.501 (paraphrased).]*
Physical Health Provider	A healthcare practitioner who provides services for the prevention, diagnosis, treatment and rehabilitation of physical illnesses and injuries. Examples include, but are not limited to: • general practice physician • internist • surgeon • oncologist • radiologist • physical therapist *[source: Created by the SHIG team.]*
Privacy	The right of individuals and organizations to control the collection, storage, and dissemination of information about themselves. *[source: California Department of Technology website https://www.ncbi.nlm.nih.gov/pubmed/281768.]*

Term	Definition
Program Evaluation	A systematic way to improve and account for health actions by ensuring specific goals are defined as well as a description of the program, definition and measurement of outcome, assessment of goals and outcomes, analysis of data and implementing findings. *[source: National Institutes of Healthwebsite https://cdt.ca.gov/security/technical-definitions/.]*
Psychotherapy Notes	Notes recorded (in any medium) by a mental health provider documenting or analyzing the contents of conversation during a private or group, joint or family counseling session and that are separated from the rest of the individual's medical record. *Note: Medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and summary information (diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date) are NOT considered psychotherapy notes.* *[source: 45 C.F.R. § 164.501 (paraphrased).]*
Qualified Professional Persons	Persons whose training and experience are appropriate to the nature and level of work in which they are engaged. May be a physician, psychologist, or non-clinician professionals. *[source: Created by the SHIG team.]*
Qualified Service Organization (QSO)	An individual or entity who: 1) provides services to a 42 C.F.R. Part 2 program, such as data processing, bill collecting, dosage preparation, laboratory analyses, or legal, accounting, population health management, medical staffing, or other professional services, or services to prevent or treat child abuse or neglect, including training on nutrition and child care and individual and group therapy, and 2) has entered into a written agreement with a 42 C.F.R. Part 2 program under which that individual or entity: (i) acknowledges that in receiving, storing, processing, or otherwise dealing with any patient records from the 42 C.F.R. Part 2 program, it is fully bound by the regulations in this part; and (ii) if necessary, will resist in judicial proceedings any efforts to obtain access to SUD patient-identifying information. *[source: 42 C.F.R. § 2.11 (paraphrased).]*

Term	Definition
Qualified Service Organization Agreement (QSOA)	A written agreement between a 42 C.F.R. Part 2 program and a QSO that permits the exchange of patient-identifying information without consent. Under the QSOA, the QSO agrees to: • comply with 42 C.F.R. Part 2 regulations • resist any judicial efforts to obtain access to patient records except as permitted by law *[source: 42 C.F.R. § 2.11 (paraphrased).]*
Research	A systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalized knowledge. *[source: 45 C.F.R. § 164.501.]*
Security	The administrative, physical and technical safeguards in, or protecting, an information system. *[source: 45 C.F.R. § 164.304; Cal. Health & Safety Code § 1280.18.]*
Social Services Case Manager (SCCM)	Social work patient often have multiple and complex needs. Social workers who specialize in assessing complex patient needs assist patients and their families accessing needed services (examples include but are not limited to….), and coordinating care (examples include…) among multiple service providers. For more information see the National Association of Social Workers site: www.socialworkers.org *[Source: Created by the SHIG team.]*
Substance Use Disorder Regulations	Federal regulations found in 42 C.F.R. Part 2. *[source: Created by the SHIG team.]*
Substance Use Disorder (SUD) Treatment Program	Synonymous with "Program" - An individual, entity, or identified unit within a general medical facility providing, or publically claiming to provide, substance use disorder diagnosis, treatment or referral for treatment; or medical personnel or other staff in a general medical care facility whose primary function is to provide substance use disorder diagnosis, treatment or referral for treatment. *[source: 42 C.F.R. § 2.11 (paraphrased).]*
Substance Use Disorder (SUD) Patient-Identifying Information	Health information related to the diagnosis or treatment (including referral for treatment) of a SUD, such as patient's name, address, SSN, biometrics, or similar information by which the identity of the patient can be established with reasonable accuracy. *[source: Created by the SHIG team, based on 42 C.F.R. § 2.11.]*

Term	Definition
Treatment	The provision, coordination, or management of healthcare and related services by one or more health providers, including the coordination or management of healthcare by a health provider with a third party; consultation between health providers relating to a patient; or the referral of a patient for healthcare from one health provider to another. *[source: 45 C.F.R. § 164.501.]*
Whole Person Care (WPC)	The coordination of physical health, behavioral health, and social services, as applicable, in a patient-centered manner with the goals of improved health and well-being through more efficient and effective use of resources. *[source: Created by the SHIG team, based on DHCS website http://www.dhcs.ca.gov/services/Pages/WholePersonCarePilots.aspx.]*

Appendix 5 - Acronyms

Acronym	Meaning
42 C.F.R. Part 2	Part 2 of Title 42 of the Code of Federal Regulations
ACO	Accountable Care Organization
BA	Business Associate
BAA	Business Associate Agreement
BH	Behavioral Health
CA	Two-letter abbreviation for California
CAHIE	California Association of Health Information Exchanges
CAHP	California Association of Health Plans
CalHIPSO	California Health Information Partnership & Services Organization
CalOHII	California Office of Health Information Integrity
CBHDA	County Behavioral Health Directors Association of California
CDPH	California Department of Public Health
C.F.R.	Code of Federal Regulations
CHA	California Hospital Association
CHCF	California Health Care Foundation
CHHS	California Health and Human Services
CMIA	Confidentiality of Medical Information Act
CPEHN	California Pan-Ethnic Health Network
DEA	Drug Enforcement Agency
DHCS	Department of Health Care Services
DSH	Department of State Hospitals
DUA	Data Use Agreement
EMS	Emergency Medical Services
FQHC	Federally Qualified Health Center
HIE	Health Information Exchange
HIO	Health Information Organization
HIPAA	Health Insurance Portability and Accountability Act
HSC	Health and Safety Code
IP	Internet Protocol
IRS	Internal Revenue Service
LEO	Law Enforcement Official
LPS	Lanterman–Petris–Short Act
MH	Mental Health
MHSOAC	Mental Health Services Oversight & Accountability Commission
OHCA	Organized Health Care Arrangement
PAHRA	Patient Access to Health Records Act
PH	Physical Health
QSO	Qualified Service Organizations

Acronym	Meaning
QSOA	Qualified Service Organization Agreement
SHIG	State Health Information Guidance
SHIPM	Statewide Health Information Policy Manual
SJCHIE	San Joaquin Community Health Information Exchange
SS	Social Services
SSCM	Social Services Case Manager
SUD	Substance Use Disorder
URL	Universal Resource Locators
WIC	Welfare and Institutions Code
WPC	Whole Person Care