



CENTER FOR
DATA INSIGHTS
AND INNOVATION
CALIFORNIA HEALTH &
HUMAN SERVICES AGENCY

STATE HEALTH INFORMATION GUIDANCE 3.1

SHARING HIV/AIDS INFORMATION IN CALIFORNIA

April 2023



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Volume 3.1 – Change Log

Section	Page(s)	Change
Entire document	All	<ul style="list-style-type: none"> • AB172 – Human Services. (Chapter 696, October 8, 2021) – updated document to reflect new Center for Data Insights and Innovation (CDII) along with associated updates to statutory authority. Removed references to California Office for Health Information Integrity. • Updated for ADA compliance • Updated CDII web address information
Appendix 1 – SHIG Participants	38	Added list of SHIG Development Contributors for Volume 3.1 effort
Appendix 2 – Authorization Information	40	HIPAA Authorization Form Requirements was updated to reflect requirements as well as core elements for a valid HIPAA authorization.
Appendix 6 – Definitions	68	Patient’s Representative definition was updated to replace “treat” with “deal with” to eliminate any confusion with multiple meanings of the word “treat.”

Executive Summary

According to the 2019 California HIV Surveillance Report¹, California has 137,785 people living with Human Immunodeficiency Virus (HIV) / Acquired Immunodeficiency Syndrome (AIDS). Persons living with HIV/AIDS require coordination of care between health providers; community-based organizations; public health departments; and other entities. Sharing patient health information as well as other personal information is important to address the needs of the patient and coordinate care. Privacy laws can complicate the coordination of care across various providers and in some cases cause providers to prohibit sharing.

In this State Health Information Guidance (SHIG), the State of California provides guidance about how patient health information can be shared in the day-to-day practice of providing integrated care and services to the people of California. The SHIG clarifies federal and state laws that effect disclosure and sharing of patient health information specific to the population of people living with HIV/AIDS, by providing scenario-based guidance written in simple, everyday business language.

The SHIG development process involves extensive input from non-profit, private, community-based, and government organizations involved in the delivery of services to people living with HIV/AIDS. During stakeholder sessions, participants offered ideas, identified common concerns and barriers to sharing patient information, and provided insights about how organizations coordinate services. The SHIG scenarios are based on stakeholder feedback. In addition, the SHIG Advisory Committee provided periodic feedback on materials as the SHIG was developed.

The State believes appropriate exchange of patient health information can be achieved to effectively provide a patient with coordinated and integrated care and services while still protecting the patient's right to privacy. Based on this principle and relevant federal and state law, the clarifying guidance in this document is organized to move from general to more specific guidance in two levels:

1. **General Guidance** identifies specific federal and state laws regarding the disclosure of patient health information to assist health and program providers determine whether and when they can share patient information.
2. **Scenario-Based Guidance** provides answers and clarifications to stakeholder-identified questions through flow-chart graphics and narrative responses for the following four scenarios:

¹ California Department of Public Health, Office of AIDS, California HIV Surveillance Report — 2019.

- a. Health Provider to Patient (Electronically)
- b. Public Health to Community-based Organization
- c. Health Provider to Community-based Organization
- d. Community-based Organization to Partner(s)

Federal and state laws regarding the privacy of patient health information clearly allow patient health information to be shared for many purposes when a patient or patient's representative provides authorization. Therefore, this guidance on the exchange of patient health information focuses on uses and disclosures that do not require a valid authorization from the patient or their authorized representative. However, there are times when patient health information can only be shared with an authorization and the scenarios inform when that must occur.

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 circumstances. This guidance is for informational purposes only and should not be considered as legal advice from 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 the SHIG. Readers are encouraged to consult an attorney prior to developing and implementing operational policies and procedures governing the use and disclosure of patient health information.

The SHIG is not intended as a comprehensive solution for all the associated legal, technological, operational, cultural, and financial issues associated with sharing patient health information. It is, however, intended to encourage responsible and appropriate information sharing 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, social services agencies, health plans and other payers, care coordinators, concerned individuals, the courts, county and local governments, community-based organizations, state agencies, and the Legislature must collaborate and dialog with one another to fully achieve this document's purpose. To protect patient rights while promoting whole-person care 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 coordination of services for people living with HIV/AIDS. Possible next steps for readers might include:

- Sharing the SHIG with appropriate staff and leaders within the readers' organizations and with staff and leaders in partner organizations
- Reviewing and possibly updating organization policies and procedures
- 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 the provision of care and services to people living with HIV/AIDS only if there is meaningful follow-up action.

Navigating SHIG

This section helps 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 and phrases (which may include acronyms) are underlined 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 6 - Definitions](#). All forms of a word are included under one definition – for example, 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 in [Appendix 7 - Acronyms](#).

In addition to words and phrases, the titles of specific sections of the SHIG (or of reference documents included in the appendices) will have hyperlinks the first time they appear in each section. 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, note the links to [Appendix 6 - Definitions](#) and [Appendix 7 - Acronyms](#) here and in the paragraph above.

Lastly, the [Table of Contents](#) is also a navigation tool. In the electronic version 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 information [privacy](#) laws and policies.
- **Scenario-Based Guidance** – This is guidance that addresses specific questions for each of the following scenarios:
 - [Health Provider to Patient \(Electronically\)](#)
 - [Public Health to Community-based Organization](#)
 - [Health Provider to Community-based Organization](#)
 - [Community-based Organization to Partner\(s\)](#)

Each scenario answers a specific question raised by SHIG stakeholders. It uses illustrations to answer common questions regarding disclosure of patient health information.

The scenarios focus on the criteria for sharing information without a patient or their representative's [authorization](#). However, even when written authorization is not required by law, providers are encouraged to discuss with a patient why some forms of sharing are in their patient's best interest. Informed disclosure decisions by a patient are often strongly beneficial in engaging the patient in their own health and wellbeing.

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

Note: The guidance in this document can be used for the disclosure of individual patient health information as well as aggregate health data.

Legal Caveat

The State Health Information Guidance (SHIG) provides the State of California’s non-mandatory guidance regarding [disclosure](#) of [health information](#) related to providing services to people living with HIV/AIDS. The SHIG clarifies existing federal and state laws that affect disclosure and sharing of health and social services information within California by providing scenario-based guidance in everyday language.

While the guidance is designed to be helpful and authoritative, the SHIG is 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 by the State of California. The State and the California Center for Data Insights and Innovation (CDII) make no warranties, expressed or implied, regarding errors or omissions and assume no legal liability or responsibility for any loss or damage resulting from the use of information contained within. Readers are encouraged to consult an attorney prior to developing and implementing operational policies and procedures governing the use and disclosure of health and social services information.

The SHIG provides non-binding clarification to help readers working with HIV/AIDS information better understand relevant sections of federal and state [privacy](#) laws including, but not limited to, the:

- Ryan White Comprehensive AIDS Resources Emergency (CARE) Act
- Health Insurance Portability and Accountability Act (HIPAA)
- Confidentiality of Medical Information Act (CMIA)
- California Civil Code
- California Health and Safety Code
- California Code of Regulations

The SHIG does not address local, city, or county laws or ordinances. In addition, the SHIG only addresses the regulations listed above.

Purpose of SHIG Volume 3

Volume 3 of the State Health Information Guidance (SHIG) combines general guidance and real-life scenarios to clarify federal and state laws related to sharing of patient [health information](#) to provide coordinated services to people living with HIV/AIDS as part of whole-person care. The SHIG offers authoritative guidance to provide legal clarification for sharing information while protecting [privacy](#). Removing obstacles may result in increased [coordination of care](#) to help patients achieve better health outcomes. However, coordination of care requires patient health information to be shared in an appropriate, secure, and timely manner between different types of service providers.

The SHIG provides non-mandatory, authoritative guidance from the State of California on the uses, disclosures, and protection of patient health information. This guidance document is not designed to address all sharing challenges that California providers currently experience, but does address those issues stakeholders told us were their highest priority. The SHIG Volume 3 aims to clarify federal and state laws and regulations for a non-legal audience and to help inform health and social service providers about the when, why, and how patient health information may be shared among whole-person care partners.

Federal and state laws and regulations regarding the privacy of patient health information clearly allow this information to be shared for a wide variety of purposes when a patient or their representative provides valid [authorization](#). Therefore, the SHIG focuses on exchange of patient health information that do not require an authorization from the patient or their representative. However, there are times when patient health information can only be shared with valid authorization and the scenarios inform when that must occur.

The intended audience of the SHIG is [health providers](#); [health plans](#) and other payers; patient and privacy advocacy organizations; county and local governments; community-based organizations; and other interested parties. (*State entities should refer to the Statewide Health Information Policy Manual for guidance.*)

General guidance and real-life 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 privacy 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 patient health information within California by providing scenario-based guidance in everyday language.

Background of SHIG Volume 3

The State Health Information Guidance (SHIG) project was initially developed by the former California Health and Human Services Agency's (CalHHS) Office of Health Information Integrity (CalOHII). CalOHII is now the CalHHS Center for Data Insights and Innovation (CDII).

Part of CDII's mission is to assist State departments to protect and secure access to the [health information](#) in their care. CDII's statutory authority is to interpret and clarify federal and state laws – which led to the creation of the *Statewide Health Information Policy Manual* (SHIPM). The SHIPM provides mandatory guidance for California State departments covered by Health Insurance Portability and Accountability Act (HIPAA). The SHIPM, originally published in 2015, is updated annually and in use today.

Leveraging this experience, CDII created the *State Health Information Guidance (SHIG) Volume 1 – Sharing Behavioral Health Information in California* (originally published in January 2018) as non-binding guidance to interpret and clarify federal and state law for non-State departments. In addition, CDII has published *SHIG Volume 2 - Guidance on Sharing Health Information to Address Food and Nutrition Insecurity in California* (originally published in April 2021).

The California Health Care Foundation (CHCF), Archstone Foundation, and the Centers for Medicare and Medicaid Services (CMS) provided CDII with grants to augment the SHIG to address information sharing with some of the State's vulnerable populations (e.g., people living with HIV/AIDS; people living with developmental disabilities; older adults; foster youth; minors; during public health emergencies; people experiencing homelessness and housing insecurity). In November 2020, CDII launched another SHIG project to provide health information guidance related to each of these communities requiring care. Since the project's inception, CDII made a decision to publish one SHIG volume for each population/topic.

SHIG Volume 3 provides clarification of federal and state law targeting the sharing of patient health information to support the coordination of [treatment](#)/care and services to people living with HIV/AIDS. Serving these individuals relies on seamless information sharing between all members of the services/treatment/care community. This includes public, private, community-based, and non-profit organizations such as [health providers](#); [health plans](#) and other payers; independent service providers; county and local governments; social service and public health agencies; and others involved in services. Like the original SHIG, this augmentation will illustrate a path to comply with federal and state [privacy](#) laws while ensuring that each patient receives the services they need to achieve care and personal independence. The goal of this document is to address stakeholder challenges in interpreting federal and state privacy laws protecting patient health information.

The process to develop SHIG Volume 3 recruited on the experience, expertise, and knowledge of multiple committed stakeholders who identified and prioritized the most critical issues that became the basis for the scenarios in this volume. The project began in November 2020 with outreach to various and diverse stakeholders – CDII conducted surveys and interviews to collect initial insights. From this information, the team held two (2) sessions – the goal was to capture the current barriers to information sharing and gather insights on issues preventing coordinated care and services. Below are themes heard from the stakeholders during the sessions related to sharing [HIV/AIDS information](#):

- The special protections for [HIV test results](#) has a consequence of continuing the cycle of stigma for persons living with HIV/AIDS
- It is harder for patients to have easy access to their health records because the patient must first go through the doctor to get HIV test results
- Community-based organizations (CBO) with licensed healthcare providers should have access to HIV test results allowing them to provide the full continuum of care for their clients as well as the ability to perform public health activities and [partner notifications](#)
- Health providers would like to coordinate with licensed healthcare providers at CBOs – allowing the CBO to provide HIV test results at scheduled appointments
- Public health departments and health providers would like CBOs to assist with [partner](#) services and to help providers stay in touch with their patients

During our closing session, the stakeholders input informed the selection of final scenarios for SHIG Volume 3.

Additionally, a subset of stakeholders participated in the SHIG Advisory Committee. This group reviewed all SHIG content as it was developed, sharing their input and expertise to help shape the final SHIG document.

Refer to [Appendix 1 - SHIG Participants](#) for a list of all individuals and organizations participating in the SHIG Volume 3 efforts.

Conclusion

One of the main objectives of the SHIG is to promote better care integration and better health and wellness outcomes while protecting privacy. Through feedback received via its “grass roots” stakeholder engagement method, CDII believes the greatest value provided by the SHIG is its clarification of federal and state laws by translating the complex laws into non-legal and non-technical language for a general audience. The intention is that this clarity will empower health and other service providers to appropriately exchange patient health information, ultimately leading to improved healthcare outcomes for their patients.

General Guidance

The State believes appropriate exchange of patient [health information](#) can effectively provide a patient with coordinated and integrated whole person care while still protecting the patient's right to [privacy](#). Many [health providers](#) may choose to not share patient health information with other health providers due to the complexity and lack of clarity of federal and state laws as well as the fear of non-compliance. This creates gaps in appropriate and often needed services to support persons living with HIV/AIDS.

Note: The guidance in this document can be used for the disclosure of individual patient health information as well as aggregate health data.

Generally Applicable Guidance

Authorizations for Release of Protected Health Information

Health providers are encouraged to take the lead in coordinating [authorizations](#) for their patients when they make referrals. A copy of the completed and signed authorization form should be forwarded, whenever feasible by the provider as part of a referral. This is a great assistance to the patients, such as older adults, people experiencing homelessness, and people living with disabilities, for whom downloading, printing, and forwarding/ mailing copies of authorization forms may be burdensome and a barrier to seeking [treatment](#) or services.

Many providers believe that a patient or [patient's representative](#) authorization that serve multiple purposes is illegal – this is not true. There is a difference between a compound authorization and an authorization combining multiple releases of [health information](#).

A [compound authorization](#) mixes an authorization for the use and [disclosure](#) of health information with another health services document – typically related to consent to receive treatment or assign payment of benefits to the provider. The Health Insurance Portability and Accountability Act (HIPAA) prohibits compound authorizations. The patient or patient's representative authorization for the use and disclosure of health information must be voluntary.

On the other hand, a HIPAA [covered entity](#) can combine (or consolidate) authorizations for the use and disclosure of health information for multiple purposes or to multiple entities into a single form. The key to a [combined authorization](#) is that the authorization focuses on uses and disclosures of health information and does not include any other legal permissions. This allows the patient (or patient's representative) to sign one authorization form for all disclosures of health information from a specific provider. Other items to keep in mind when consolidating the authorization for use and disclosure of health information:

- It can list specific persons, providers and/or categories of providers to whom the patient's provider can release the health information
- After the patient (or patient's representative) signs the authorization, adding a new category of treatment and/or a new provider (not listed in the original authorization) will require a new authorization
- An authorization for the use or disclosure of psychotherapy notes **may not be combined** with an authorization for the use or disclosure of other types of health information

Federal and state statutes and regulations regarding the [privacy](#) of health information clearly allow health information to be shared when a patient or [patient's representative](#) provides a valid authorization. Therefore, the scenarios presented in this health information guidance will focus on activities involving uses and disclosures of health information that do not require an authorization from the patient or patient's representative, whenever possible. Refer to [Appendix 2 – Authorization Information](#) for the specific documentation requirements for authorized disclosure.

HIV Test Results are Specially Protected

HIPAA and CMIA do not contain special protections for [HIV/AIDS information](#) – both laws treat HIV/AIDS information the same as other health information.

However, [HIV test results](#) are given special protections by Health and Safety Code. Unlawful disclosure of HIV test result can result in civil penalties, criminal sanctions/liabilities.

HIV test results may only be disclosed without authorization in specific situations – these include:

- To the patient
- To another health provider treating the patient
- There are other limited situations that are not included here

Each disclosure of HIV test results requires a separate authorization.

When received by the state or a local public health department, HIV/AIDS information are considered “confidential public health records” and can only be disclosed in limited circumstances or with an authorization from the patient.

A [Health Information Organization](#) (HIO) must have written authorization from the patient to include HIV test results in a [Health Information Exchange](#) (HIE) and ensure all HIV test results are stored separately with specific access requirements to ensure appropriate access.

Consult with legal counsel if you have any questions about the use and disclosure of HIV test results.

[45 C.F.R. §§ 164.502(a)(1)(i), 164.524; Cal. Civ. Code § 56.10(b)(7); Cal. Health & Safety Code §§ 120980, 120985, 121010, 121025, 121035.]

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. The minimum necessary requirement in HIPAA does not apply to the following – as they are exceptions:

- Disclosures made to the patient who is the subject of the information
- 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

[45 C.F.R. § 164.502(b).]

Designation of Public Health Authorities by State and Local Public Health Departments

HIPAA provides an exception to the patient or patient’s representative authorization requirement for public health activities. This exception allows covered entities to use and disclose health information to prevent or control disease, injury, or disability. State and local public health departments are tasked with implementing effective HIV detection and prevention programs as well as evaluating the efficacy and effectiveness of those programs through public health surveillance.

State, county, and local public health entities could have the ability (if state law was changed to match HIPAA) to designate non-governmental community partners in patient and social service care as [public health authorities](#) to assist public health departments in prevention and surveillance through contracts, Memoranda of Understanding (MOU’s), or other legal agreements. Under HIPAA, if a state, county, or local public health entity grants this authority to a community partner, the designated entities will be considered public health authorities. These entities can therefore collect or receive health information under relevant public health exceptions, without an authorization signed by the patient or the patient’s representative, as long as the CMIA does not regulate the information. For example, a county public health department working regularly with a community-based organization to conduct [partner services](#) could designate the organization as a [public health authority](#) in their contractual agreement since the organization is supporting the county’s public health activities in the prevention and surveillance of HIV/AIDS.

Of course, it is essential that the community partner that is acting as a public health authority ensure the information shared is sufficiently described, specifically related to a public health activity or intervention, and the minimum necessary to achieve the public health intervention. Counties and local public health entities are encouraged to consider how to best make the use of legal exceptions, such as the one in HIPAA for public health activities, to assist in the prevention and surveillance of HIV/AIDS.

[45 C.F.R. §§ 164.501, 164.512(b)(1)(i).]

Achieving Health Equity

HIV can affect anyone, however some groups are at higher risk for HIV. According to the Centers for Disease Control and Prevention (CDC)², as of 2018, nearly half of the people living with HIV in the US are age 50 or older and nearly 70% of the new HIV diagnoses occur in Black/African American and Hispanic/Latino populations.

These groups, especially, may experience greater stigma related to HIV, which can lead to a lower rate of testing and higher incidence of diagnosis for HIV.

HIV testing and care may be harder for these groups as HIV prevention and treatment efforts often target younger people and may be more difficult to get due to language barriers and social/economic issues associated with poverty. Health providers and community-based organizations should conduct outreach, education, and awareness to ensure their patients understand prevention, testing, and care options.

Summary of Primary Laws

Federal and state laws protect the uses and disclosure of [health information](#) - some laws specifically protecting [HIV/AIDS information](#).

The primary federal regulations affecting the uses and disclosures of health information for people living with HIV/AIDS include:

- 42 U.S.C. 300ee et seq. – Ryan White Comprehensive AIDS Resources Emergency (CARE) Act
- 45 C.F.R. Parts 160 through 164 – HIPAA

The primary State of California statutes and regulations pertaining to the uses and disclosures of health information for people living with HIV/AIDS include:

- Civil Code § 56 et seq. – California Confidentiality of Medical Information Act (CMIA)
- Health and Safety Code – various HIV/AIDS specific code sections

² Centers for Disease Control and Prevention – HIV by Group webpage. Link: <https://www.cdc.gov/hiv/group/index.html>

- 17 C.C.R. § 2502 – Reports by Local Health Officer to State Department of Public Health

Following is the State’s interpretation of these regulations and laws related to the access, use and disclosure of health information for people living with HIV/AIDS. The [Guidance for Specific Scenarios](#) section provides additional details and examples.

The SHIG does not address local, city, or county laws or ordinances. Behavioral [health providers](#) should refer to *SHIG Volume 1 – Sharing Behavioral Health Information in California* for guidance regarding the sharing of mental health or substance use disorder patient identifying information.

Federal

Ryan White Comprehensive AIDS Resources Emergency (CARE) Act (42 U.S.C. 300ee et seq.)

The CARE Act focuses on funding grants to provide HIV care and [treatment](#) services to low-income people living with HIV who are uninsured or underserved. The Ryan White HIV/AIDS Program provides a comprehensive system of HIV primary medical care, essential support services, and medications for people living with HIV to improve health outcomes and reduce HIV transmission among hard-to-reach populations.

Health Insurance Portability and Accountability Act Privacy Rule (45 C.F.R. § 164.500 et seq.)

The HIPAA [Privacy](#) Rule establishes national standards to protect patients’ 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 health information, and sets limits and conditions on the uses and disclosures of such information without patient or [patient’s representative authorization](#). Generally, exceptions are allowed for treatment, payment, and [healthcare operations](#). The Privacy Rule also gives patient’s rights over their own health information, including rights to access and to request corrections. HIPAA treats all health information the same and does not establish special rules for HIV/AIDS information.

Health Insurance Portability and Accountability Act Security Rule (45 C.F.R. § 164.300 et seq.)

The HIPAA [Security](#) Rule establishes national standards to protect patients’ electronic health information that is created, received, used, or maintained by a HIPAA [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

Confidentiality of Medical Information Act (Cal. Civ. Code § 56 et seq.)

This law protects the privacy of health information by limiting disclosures by health providers, health plans, and contractors. The CMIA is California's primary health privacy act similar to HIPAA, the CMIA does not establish special rules for HIV/AIDS information.

Functions and Duties of Local Health Officers (Cal. Health & Safety Code § 120175)

This law requires reporting of contagious, infectious or communicable diseases to prevent the spread of the disease.

Mandated Blood Testing and Confidentiality to Protect Public Health (Cal. Health & Safety Code §§ 120975 - 121023)

This law protects the confidentiality of mandated blood testing, including [HIV test results](#), to protect public health. This law includes [partner notification](#) of [HIV status](#).

AIDS Public Health Records Confidentiality Act (Cal. Health & Safety Code §§ 121025 - 121035)

This law protects the public health records related to HIV/AIDS collected by state and local public health departments and their agents.

Patient Access of Health Records Act (Cal. Health & Safety Code § 123100)

This law protects describes a patient's right of access or denial of access to health information.

Patient Access to Health Records Act: Internet or Other Electronic Posting (Cal. Health & Safety Code § 123148)

This law requires patient access to their health information and limits the disclosure of HIV test results to the patient electronically.

Reports by Local Health Officer to State Department of Public Health (17 C.C.R. § 2502(f))

This regulation outlines the public health reporting requirements for local health departments – including HIV infection, stage 3.

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

CAUTION! For community-based organizations providing multiple services, refer to the scenario applicable to the service/role you are providing when sharing [health information](#). For example, if the CBO is acting as a health provider, consult the scenarios applicable to the health provider role.

HIV/AIDS Scenarios

Scenario 1 – Health Provider to Patient (Electronically)

Description

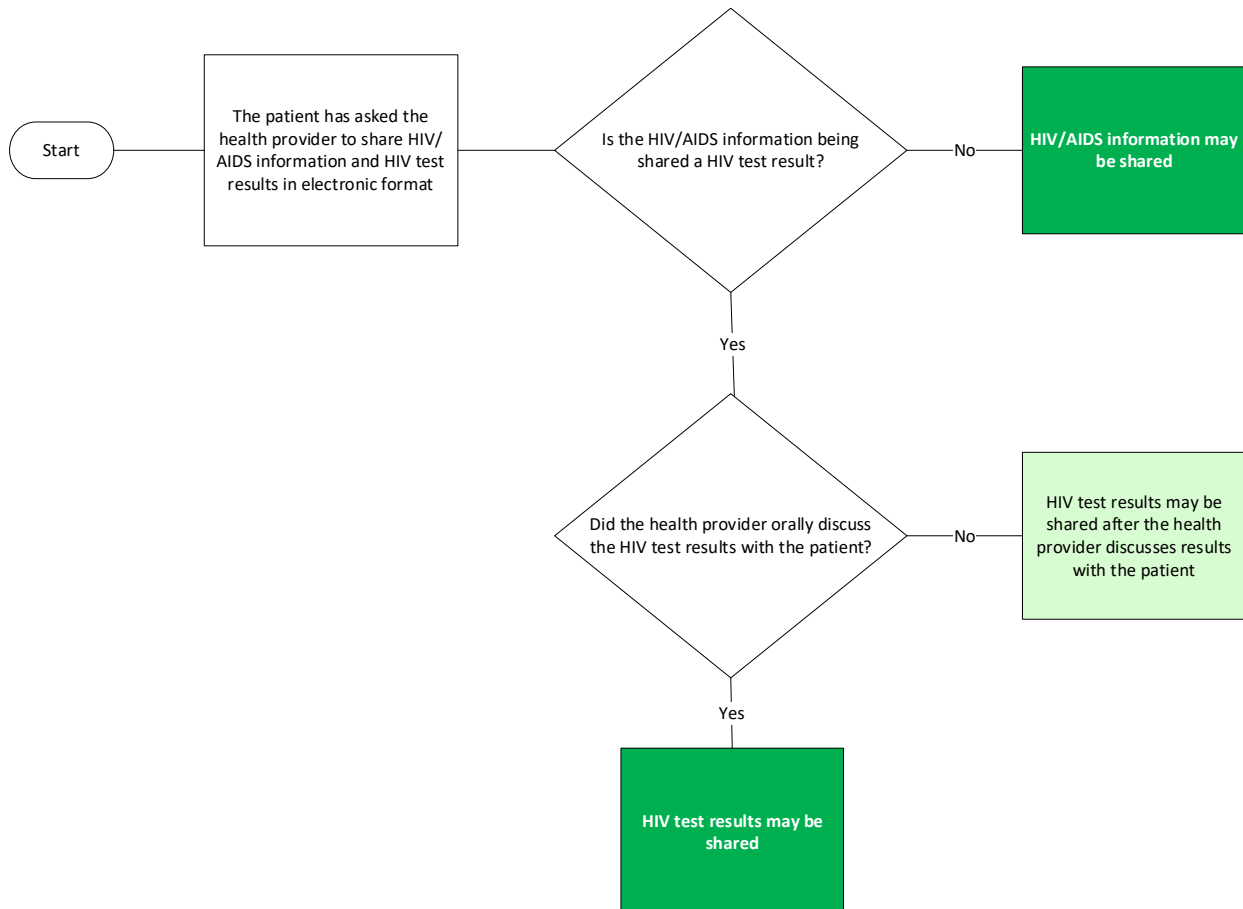
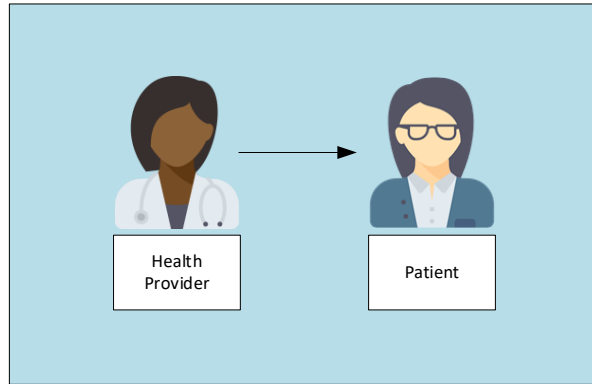
The patient has asked the [health provider](#) to share [HIV/AIDS information](#) and [HIV test results](#) electronically through the patient’s electronic health record (EHR) portal.

What HIV/AIDS information and HIV test results can a health provider share with a patient through the EHR portal?

Important Scenario Guidance Assumptions:

- The patient is over 12 years of age and has capacity to make healthcare decisions
- Organizations participating in this information exchange are not subject to California Consumer Privacy Act

Graphic – Health Provider to Patient (Electronically)



Scenario Guidance – Health Provider to Patient (Electronically)

The Health Insurance Portability and Accountability Act (HIPAA) and the California Confidentiality of Medical Information Act (CMIA) do not contain special protections for HIV/AIDS information and HIV test results. Both laws treat HIV/AIDS information and HIV test results the same as other [health information](#). However, there is a different state law that provides special protections specifically to HIV test results.

[45 C.F.R. § 164.502(a)(1)(i); Cal. Civ. Code § 56.10(b)(7); Cal. Health & Safety Code § 120980.]

In general, patients have the right to access their own health information, so a health provider is required to share HIV/AIDS information and HIV test results with their patient unless the health provider goes through the appropriate denial process. However, unlike HIV/AIDS information, HIV test results are specially protected by the California Health and Safety Code and require an additional step before a patient can access them. These protections are limited to HIV test results, and do not include other HIV/AIDS information, such as diagnosis, medications, and [treatment](#). So, a patient can access all other HIV/AIDS information (excluding HIV test results) such as their diagnosis, medication list, and treatment records in the same way they do their other health information.

[45 C.F.R. § 164.524; Cal. Health & Safety Code §§ 120980, 121015(b), 123110, 123148(f).]

Patients have a right to receive HIV test results in the requested format, including electronically with limited exceptions. However, under California law, HIV test results cannot be [disclosed](#) to the patient electronically unless:

- The patient requests the HIV test results electronically;
- The health provider believes electronic disclosure is appropriate (refer to CAUTION! below); and
- The health provider has discussed the HIV test results in person/by phone/other oral communication before releasing them electronically.

[Cal. Health & Safety Code §§ 121010, 123148(f).]

CAUTION! While California allows a health provider to use discretion to decide whether an electronic disclosure of HIV test results is “appropriate,” HIPAA is different and requires a health provider to allow patient electronic access to HIV test results within the federal time frame unless the health provider goes through the process to deny access.

[45 C.F.R. § 164.524(c).]

Citations and Related Guidance

- 45 C.F.R. § 164.502(a)(1)(i).
- 45 C.F.R. § 164.524.
- Cal. Civ. Code § 56.10(b)(7).
- Cal. Health & Safety Code § 120980.
- Cal. Health & Safety Code § 121010.
- Cal. Health & Safety Code § 121015(b).
- Cal. Health & Safety Code § 123110.
- Cal. Health & Safety Code § 123148(f).
- [Appendix 2 – Authorization Information](#)

Scenario 2 – Public Health to Community-based Organization (CBO)

Description

To provide effective [treatment](#) and [coordinated care](#) a local public health department would like to share [HIV/AIDS information](#) (excluding [HIV test results](#)) with a community-based organization (CBO).

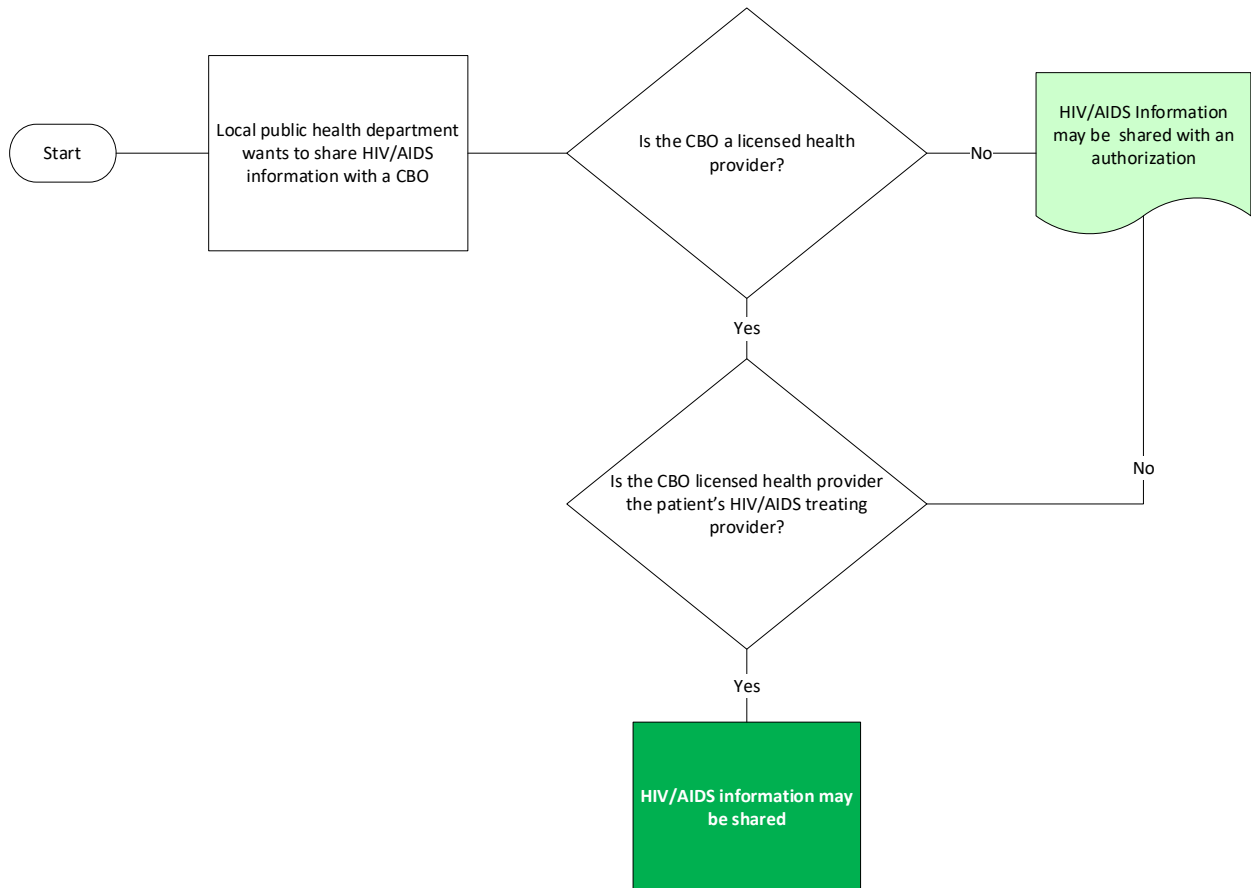
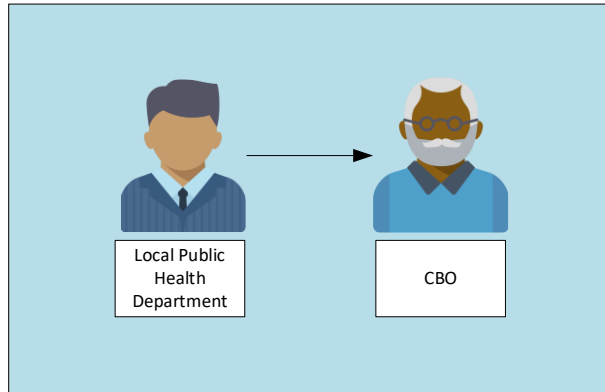
Note: For this scenario, the CBO is a licensed [health provider](#). CBOs not licensed to practice as a health provider will require a patient or [patient’s representative authorization](#).

What HIV/AIDS information (excluding HIV test results) can a local public health department share with a CBO?

Important Scenario Guidance Assumptions:

- Local public health department is not covered by the Health Insurance Portability and Accountability Act (HIPAA) or the Confidentiality of Medical Information Act (CMIA)
- CBO is a licensed health provider
- There is no patient or patient’s representative authorization
- The patient is over 12 years of age
- Organizations participating in this information exchange are not subject to California Consumer Privacy Act
- There is no public health emergency
- There is no medical emergency
- There is no court order

Graphic – Public Health to Community-based Organization



Scenario Guidance – Public Health to Community-based Organization

A local public health department may share HIV/AIDS information (excluding HIV test results) with the patient's HIV/AIDS health provider for the purpose of proactively offering and coordinating care and treatment services to the patient. The local public health department must ensure the licensed health provider at the CBO is treating the patient for HIV/AIDS before [disclosing](#) information developed or acquired by the local public health department.

[Cal. Health & Safety Code § 121025(c)(2); 17 C.C.R. § 2502(f).]

CAUTION! Information disclosed must be only the information needed for treatment and care coordination. In addition, an agreement should be signed to keep the information confidential.

[Cal. Health & Safety Code § 121025(a).]

If the CBO is not a licensed health provider, the HIV/AIDS information (excluding HIV test results) may be shared with a patient or patient's representative authorization.

[Cal. Health & Safety Code §§ 121010, 121025.]

Citations and Related Guidance

- Cal. Health & Safety Code § 121010.
- Cal. Health & Safety Code § 121025.
- 17 C.C.R. § 2502(f).
- [Appendix 2 – Authorization Information](#)

Scenario 3 – Health Provider to Community-based Organization (CBO)

Description

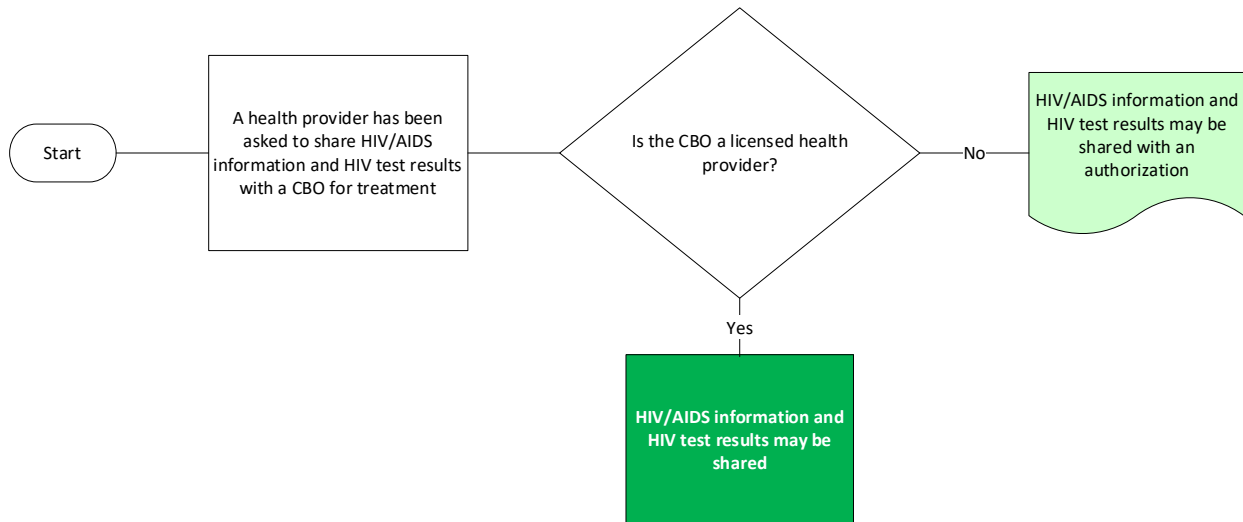
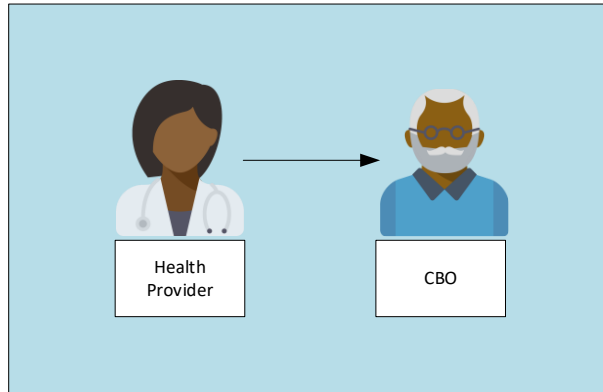
To provide effective [treatment](#) and [coordinated care](#) a health provider would like to share [HIV/AIDS information](#) and [HIV test results](#) with a community-based organization (CBO).

Note: For this scenario, the CBO is a licensed [health provider](#). CBOs not licensed to practice as a health provider will require a patient or [patient’s representative authorization](#).

[What HIV/AIDS information and HIV test results can a health provider share with a CBO?](#)

- Important Scenario Guidance Assumptions:
- CBO is a licensed health provider
 - There is no patient or patient’s representative authorization
 - The patient is over 12 years of age
 - Organizations participating in this information exchange are not subject to California Consumer Privacy Act
 - There is no public health emergency
 - There is no medical emergency
 - There is no court order

Graphic – Health Provider to Community-based Organization



Scenario Guidance – Health Provider to Community-based Organization

Generally, [health information](#), including HIV/AIDS information, can be shared for diagnosis/treatment purposes. The health provider can share HIV/AIDS information with a licensed health provider at the CBO for [coordination of care](#) and treatment purposes.

[45 C.F.R. § 164.506; Cal. Civ. Code § 56.10(c)(1).]

HIV test results can also be shared for coordination of care and treatment purposes with the patient’s health provider. HIV test results can also be shared with staff of the patient’s health provider if they provide direct care and treatment to the patient. If these conditions are not met, the HIV test results may be shared with a written authorization.

[Cal. Health & Safety Code §§ 120980, 120985, 121010.]

A patient or patient’s representative authorization is required to share HIV/AIDS information or HIV test results when a CBO is not acting as a licensed health provider or the information is not for treatment purposes.

[45 C.F.R. § 164.508; Cal. Civ. Code § 56.11.]

Citations and Related Guidance

- 45 C.F.R. § 164.506.
- 45 C.F.R. § 164.508.
- Cal. Civ. Code § 56.10(c)(1).
- Cal. Civ. Code § 56.11.
- Cal. Health & Safety Code § 120980.
- Cal. Health & Safety Code § 120985.
- Cal. Health & Safety Code § 121010.
- [Appendix 2 – Authorization Information](#)

Scenario 4 – Community-based Organization (CBO) to Partner(s)

Description

A community-based organization (CBO) is conducting [partner notification](#) services and needs to share [HIV status](#) with a [partner\(s\)](#) of an HIV patient.

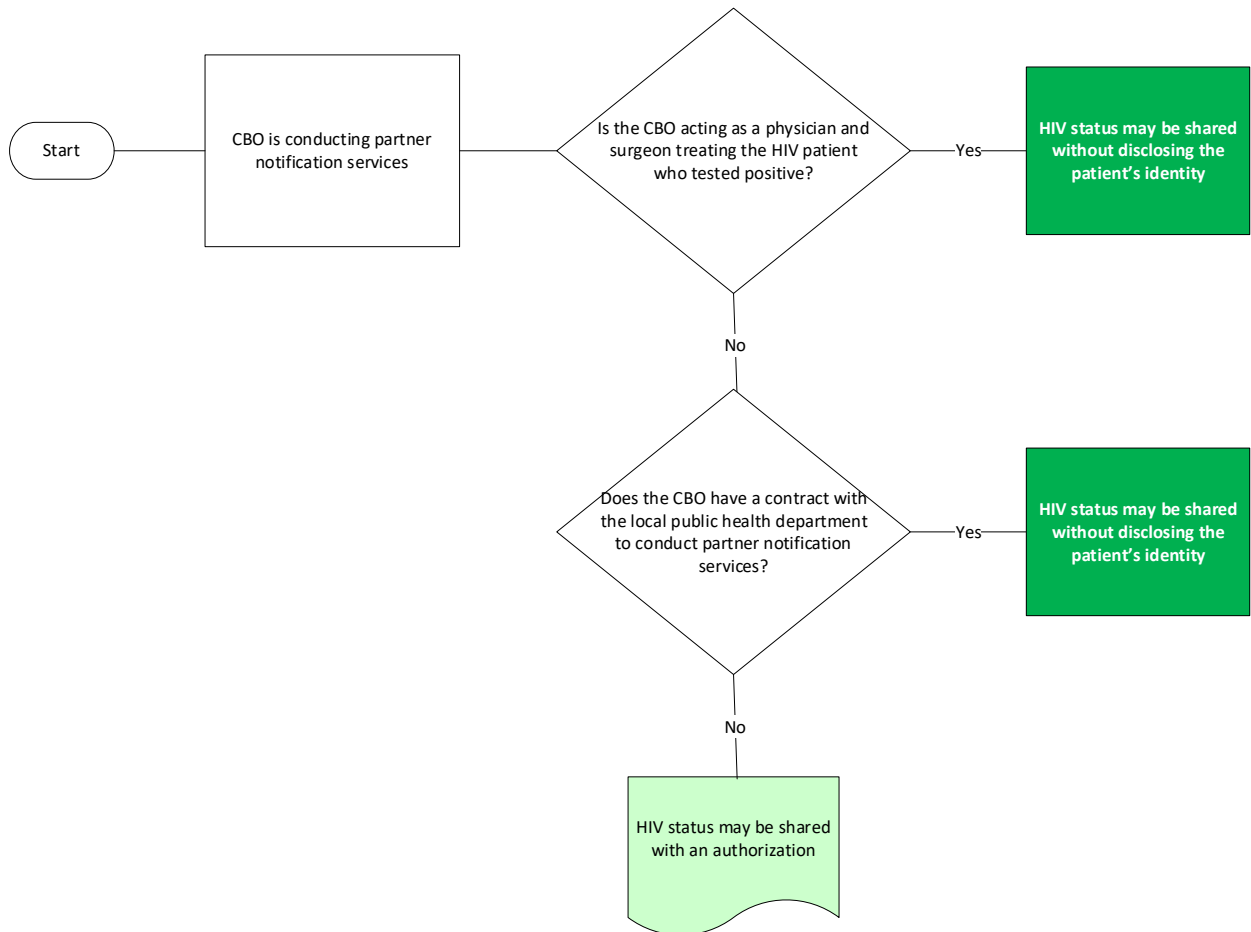
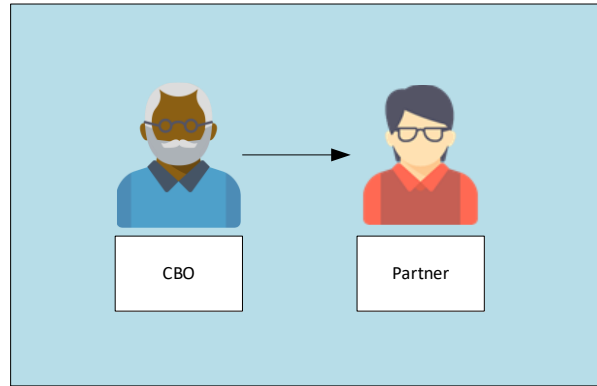
Note: California law specifically requires the [health provider](#) for this scenario to be a certified “physician and surgeon.”

What HIV/AIDS information can a CBO share during partner notification services?

Important Scenario Guidance Assumptions:

- There is no patient or [patient’s representative authorization](#)
- Organizations participating in this information exchange are not subject to California Consumer Privacy Act
- There is no public health emergency
- There is no medical emergency
- There is no court order

Graphic – Community-based Organization to Partner(s)



Scenario Guidance – Community-based Organization to Partner(s)

CAUTION! – for this scenario only a health provider who is specifically certified as a “physician and surgeon” is allowed to conduct partner notification.

As long as the patient’s identity is kept confidential, a physician and surgeon or a local public health department may notify the partner(s) of a patient who has a confirmed HIV-positive test result to allow the partner to seek testing, care, or to prevent transmission.

[45 C.F.R. § 164.512(b)(1)(iv); Cal. Health & Safety Code § 121015.]

When a CBO is a physician and surgeon treating an HIV-positive patient, the physician and surgeon may notify partner(s) of their possible exposure to HIV, so long as the patient’s identity is not disclosed. The physician and surgeon is not required to provide partner notification, however if they choose to move forward with partner notification, they must do the following:

- Discuss the results with the HIV-positive patient and offer counseling;
- Attempt to get the HIV-positive patient’s consent to notify potentially affected individuals;
- Inform the HIV-positive patient of intent to notify the affected individuals; and
- Refer the partner(s) to appropriate care, counseling, and follow-up.

[45 C.F.R. 164.512(b)(1)(iv); Cal. Health & Safety Code § 121015(b) and (c).]

A physician and surgeon can opt for the local public health department to conduct partner notifications. In addition, a local public health department may enter into an agreement with a CBO, whether or not they are a licensed health provider, to conduct partner notification services. The contracted CBO must ensure the HIV-positive patient’s identity is kept confidential during partner notification and after referring the partner to appropriate care, expunge all records.

[45 C.F.R. § 164.512(b)(1)(iv); Cal. Health & Safety Code §§ 120175, 121015(d).]

A patient or patient’s representative authorization is required to share HIV/AIDS information or HIV test results when a CBO is not acting as a licensed health provider or when there is no contract with a local public health department to provide partner services.

[45 C.F.R. § 164.508; Cal. Civ. Code § 56.11; Cal. Health & Safety Code §§ 121010, 121025.]

Citations and Related Guidance

- 45 C.F.R. § 164.508.
- 45 C.F.R. § 164.512(b)(1)(iv).
- Cal. Civ. Code § 56.11.
- Cal. Health & Safety Code § 120175.

- Cal. Health & Safety Code § 121010.
- Cal. Health & Safety Code § 121015.
- Cal. Health & Safety Code § 121025.
- [Appendix 2 – Authorization Information](#)

Concluding Thoughts

In conclusion, the State of California recognizes the value of sharing health information when legally permissible and in the interests of the patient. Such sharing improves coordination of care and health outcomes that benefits the patient. In the current complex regulatory environment, the State recognizes it can be challenging for health providers; community-based organizations; public health departments; and other entities to understand when sharing patient health information as well as other personal information is permissible.

The State developed this State Health Information Guidance (SHIG) to help clarify conditions when health information may be shared without a signed release form and when disclosures are permitted with a signed release form.

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

Direct any questions or requests for additional information associated with this publication to:

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Appendix 1 – SHIG Participants

SHIG Stakeholder Sessions - Participants

The following organizations participated in two State Health Information Guidance (SHIG) Stakeholder Sessions held virtually in November 2020. The purpose of the sessions was to explain the project, discuss barriers to information exchange, and to solicit input on possible topics for the SHIG:

- AIDS Project Los Angeles Health (ALPA)
- California Department of Public Health (CDPH), Office of AIDS
- County of Santa Clara
- Let's Kick ASS (AIDS Survivor Syndrome) Palm Springs
- Sacramento LGBT Center
- Sierra Foothills AIDS Foundation

SHIG Advisory Committee Members

Advisory Committee members reviewed SHIG materials as they were developed and provided input/insight on SHIG content. Advisory Committee members include the following individuals and organizations.

Name	Title	Organization Name
Susan Farrington	Executive Director	Sierra Foothills AIDS Foundation
Jax Kelly	President	Let's Kick ASS (AIDS Survivor Syndrome) Palm Springs
Marisa Ramos, Ph.D.	Chief, Office of AIDS	California Department of Public Health
Sarah Rudman, MD, MPH	Assistant Health Officer and STD/HIV Controller	County of Santa Clara - Public Health
Lee Tien	Senior Staff Attorney	Electronic Frontier Foundation
Jose Emmanuel Vega	Director of Health Services	Sacramento LGBT Center

SHIG Development Contributors

Under the direction of the Center for Data Insights and Innovation (CDII) and the SHIG Advisory Committee, the following individuals contributed significantly to the development of the SHIG publication.

SHIG Volume 3.1 – Publication in 2023

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SHIG – Original Publication in 2021

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Additional Organizations Consulted

CDII and the SHIG Advisory Committee 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
Lois Richardson	Vice President, Legal Counsel	California Hospital Association
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Appendix 2 – Authorization Information

Depending upon the type of [health information](#) being released, the [signed release](#) form requirements differ by law. The Health Insurance Portability and Accountability Act (HIPAA) and Confidentiality of Medical Information Act (CMIA) each define required (but not identical) elements of a signed release form. The requirements for a signed release form from each statute or regulation are described below.

Keep in mind, a valid patient or [patient’s representative authorizations](#) must include both HIPAA as well and CMIA requirements.

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 or 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 [\(along with a description of each representative’s authority to sign on behalf of the patient\)](#)

In addition, the authorization must include the following statements:

- The Notice of Privacy Practices provides instructions for me should I choose to revoke my authorization and includes limitations on my revocation.
- Treatment, payment, enrollment or eligibility for benefits will not be affected if the authorization is not signed
- If the organization or person I have authorized to receive the information is not a health plan or health care provider; the released information may no longer be protected by federal privacy regulations

[45 C.F.R. § 164.508(c).]

CMIA-Regulated Authorization Form Requirements

When a patient or patient’s representative authorization for a disclosure of health information is required for a 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
- Specific uses and limitations on the types of medical information to be disclosed
- Name or functions of providers of healthcare, healthcare 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.]

Appendix 3 – Provider Definitions

State Health Information Guidance (SHIG) uses on the term “[Health Provider](#)” which encompasses various regulatory and legally defined terms for health provider, healthcare provider, clinician and other related terms. This appendix provides information about the federal and state laws and the terms included in the SHIG term “Health Provider.”

Health Insurance Portability and Accountability Act - 45 C.F.R. § 160.103

The Health Insurance Portability and Accountability Act (HIPAA) Final Rule defines a “health care provider” as a provider of services as defined in section 1861(u) of 42 U.S.C. 1395x(u), and a provider of medical or health services as defined in section 1861(s) of 42 U.S.C. 1395x(s). In order for a “health care provider” to be a [covered entity](#) under HIPAA, they must also transmit [health information](#) in electronic form in connection with a HIPAA covered transaction. Below is a summary of the types of providers and services outlined in these definitions:

“Provider of services” means (from 42 U.S.C. 1395x(u) § 1861(u)):

- hospital
- critical access hospital
- skilled nursing facility
- comprehensive outpatient rehabilitation facility
- home health agency
- hospice program

“Medical or other health services” means any of the following items or services (from 42 U.S.C. 1395x(u) § 1861(s)):

- physicians' services
- services, including:
 - services and supplies furnished as an incident to a physician's professional service, or kinds which are commonly furnished in physicians' offices and are commonly either rendered without charge or included in the physicians' bills
 - hospital services incident to physicians' services rendered to outpatients and partial hospitalization services incident to such services
 - diagnostic services which are:
 - furnished to an individual as an outpatient by a hospital or by others under arrangements with them made by a hospital, and
 - ordinarily furnished by such hospital (or by others under such arrangements) to its outpatients for the purpose of diagnostic study

- outpatient physical therapy services and outpatient occupational therapy services
- rural health clinic services and federally qualified health center services
- home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies
- antigens prepared by a physician for a particular patient, including antigens so prepared which are forwarded to another qualified person for administration to such patient, by or under the supervision of another such physician
- services furnished pursuant to a:
 - contract under § 1876 [42 U.S.C. 1395mm] to a member of an eligible organization by a physician assistant or by a nurse practitioner and such services and supplies furnished as an incident to his service to such a member
 - risk-sharing contract under § 1876(g) [42 U.S.C. 1395mm(g)] to a member of an eligible organization by a clinical psychologist or by a clinical social worker [and] furnished as an incident to such clinical psychologist's services or clinical social worker's services
- blood clotting factors, for hemophilia patients
- prescription drugs used in immunosuppressive therapy furnished, to an individual who receives an organ transplant for which payment is made under this title [42 U.S.C. 1395 et seq.], but only in the case of [certain] drugs furnished
- services which would be physicians' services if furnished by a physician and:
 - which are performed by a physician assistant
 - which are performed by a nurse
- certified nurse-midwife services
- qualified psychologist services
- clinical social worker services
- erythropoietin for dialysis patients
- prostate cancer screening tests
- an oral drug (which is approved by the federal Food and Drug Administration) prescribed for use as an anti-cancer chemotherapeutic agent for a given indication, and containing an active ingredient (or ingredients)
- colorectal cancer screening tests
- diabetes outpatient self-management training services;
- an oral drug (which is approved by the Federal Food and Drug Administration) prescribed for use as an acute anti-emetic used as part of an anticancer chemotherapeutic regimen if the drug is administered by a physician (or as prescribed by a physician)

- for use immediately before, at, or within 48 hours after the time of the administration of the anticancer chemotherapeutic agent
- as a full replacement for the anti-emetic therapy which would otherwise be administered intravenously
- diagnostic X-ray tests furnished in a place of residence used as the patient's home
- X-ray, radium, and radioactive isotope therapy, including materials and services of technicians
- surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations
- durable medical equipment
- ambulance service where the use of other methods of transportation is contraindicated by the individual's condition
- prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery
- leg, arm, back, and neck braces, and artificial legs, arms, and eyes, including replacements if required
- vaccines
 - pneumococcal vaccine and its administration
 - hepatitis B vaccine and its administration
- services of a certified registered nurse anesthetist
- extra-depth shoes with inserts or custom molded shoes with inserts for an individual with diabetes
- screening mammography
- screening pap smear and screening pelvic exam
- bone mass measurement

Confidentiality of Medical Information Act - Cal. Civ. Code § 56.05(m)

The California Confidentiality of Medical Information Act (CMIA) defines a “provider of health care” as:

Defined in...	Includes...
<p>Any person licensed or certified per Cal. Business and Professions Code, Division 2 (Healing Arts), commencing with section 500</p>	<ul style="list-style-type: none"> • Chiropractor • Clinical Laboratory • Dentistry • Medical Providers • Licensed Midwives • Research Psychoanalysts • Speech-Language Pathologists • Hearing Aid Dispensers • Dispensing Audiologists • Registered Dispensing Opticians • Registered Dieticians • Physical Therapy • Perfusionists • Occupational Therapy • Nursing • Nursing Midwives • Public Health Nurse • Nurse Anesthetists • Nurse Practitioners • Clinical Nurse Specialists • Vocational Nursing • Psychologists • Optometry • Physician Assistants • Naturopathic Doctors • Respiratory Therapists • Pharmacy • Psychiatric Technicians • Marriage and Family Therapists • Licensed Educational Psychologists • Licensed Clinical Social Workers

Defined in...	Includes...
	<ul style="list-style-type: none"> • Licensed Professional Clinical Counselors
Any person licensed per Osteopathic Initiative Act or the Chiropractic Initiative Act	<ul style="list-style-type: none"> • Practitioners of chiropractic
Any person certified per Cal. Health & Safety Code, Division 2.5 (Emergency Medical Services) commencing with section 1797:	<ul style="list-style-type: none"> • Emergency Medical Services Authority (EMSA) • Local Emergency Medical Services (EMS) Agencies • Hospitals • Regional Trauma Centers • Poison Control Centers • Emergency Medical Technicians (EMTs) • Paramedics
Any clinic, health dispensary, or health facility licensed per Cal. Health & Safety Code, Division 2 (commencing with section 1200)	<ul style="list-style-type: none"> • Clinic • Primary Care Clinics • Specialty Clinics • Psychology Clinics • Chronic Dialysis Clinic • Surgical Clinic • Rehabilitation Clinic • Alternative Birth Center • Health Dispensary

Appendix 4 – Summary of Privacy Laws

Due to the complex nature of [privacy](#) laws, State Health Information Guidance (SHIG) users should review and consult the materials in this section with their legal counsel.

Federal

Health Insurance Portability and Accountability Act (HIPAA)

HIPAA describes privacy, [security](#), patient rights, and healthcare transactions requirements for healthcare entities. HIPAA sets restrictions on access, use, and [disclosure](#).

<i>Item</i>	<i>Information</i>
Citation(s)	45 C.F.R. Parts 160 and 164
Who is Covered?	Covered Entities : 1) health plans ; 2) healthcare clearinghouses; and 3) health providers that conduct certain healthcare transactions electronically. Business Associates of a HIPAA covered entity.
What information is covered?	Protected Health Information (PHI)*: all "individually identifiable health information " held or transmitted by a HIPAA covered entity or its business associate, in any form or media, whether electronic, paper, or oral. *Exempts educational records covered by Family Educational Rights and Privacy Act (FERPA) .
Patient breach notification requirement?	YES
Patient access requirement?	YES
Patient amend/correct requirement?	YES
Limitations on disclosure?	YES
Respond to a subpoena?	YES
Private right of action?	NO
Liability for violation	Fines levied by federal oversight (U.S. Health and Human Services, Office of Civil Rights)

Substance Use Disorder (SUD)

42 C.F.R. Part 2 sets restrictions on access, use, and disclosure.

<i>Item</i>	<i>Information</i>
Citation(s)	42 C.F.R. Part 2
Who is Covered?	Federally assisted SUD treatment programs that meet the definition of a Program.
What information is covered?	Information that would identify a patient as having a SUD and allow very limited disclosures of information without patient authorization .
Patient breach notification requirement?	NO
Patient access requirement?	YES
Patient amend/correct requirement?	NO
Limitations on disclosure?	YES
Respond to a subpoena?	NO
Private right of action?	YES
Liability for violation	<ul style="list-style-type: none"> • Entity Liability • Criminal Liability

Family Educational Rights and Privacy Act (FERPA)

FERPA describes privacy and student/family rights requirements for educational entities. It sets restrictions on access, use, and disclosure.

<i>Item</i>	<i>Information</i>
Citation(s)	20 U.S.C. § 1232g; 34 C.F.R. Part 99
Who is Covered?	All schools that receive funds under an applicable program of the U.S. Department of Education.
What information is covered?	Education records
Patient breach notification requirement?	NO
Patient access requirement?	YES
Patient amend/correct requirement?	YES
Limitations on disclosure?	YES
Respond to a subpoena?	YES
Private right of action?	NO
Liability for violation	Loss of federal funding by U.S. Department of Education

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)

WIC sets restrictions on access, use, and disclosure.

Item	Information
Citation(s)	7 C.F.R. §§ 246.3, 246.26
Who is Covered?	WIC Program, its contractors—including WIC local agencies—as well as subcontractors
What information is covered?	Any information about a WIC applicant or participant, whether it is obtained from the applicant or participant, another source, or generated as a result of WIC application, certification, or participation, that individually identifies an applicant or participant and/or family member(s). Applicant or participant information is confidential, regardless of the original source and exclusive of previously applicable confidentiality provided in accordance with other federal, state, or local law.
Applicant/participant breach notification requirement?	NO * *Consult the WIC contract for specific contractual requirements for breach notification.
Applicant/participant access requirement?	YES
Applicant/participant amend/correct requirement?	NO
Limitations on disclosure?	YES
Respond to a subpoena?	Limited; WIC is required to quash a subpoena for a WIC applicant/participant’s confidential information unless disclosing is in the best interest of the WIC Program. (7 C.F.R. § 246.26(i).)

The Supplemental Nutrition Assistance Program (SNAP)

SNAP sets restrictions on access, use, and disclosure.

<i>Item</i>	<i>Information</i>
Citation(s)	7 C.F.R. § 272.1
Who is Covered?	State and local welfare agencies providing SNAP (known in California as CalFresh)
What information is covered?	All information obtained from SNAP applicant or recipient households.
Patient breach notification requirement?	NO
Patient access requirement?	YES
Patient amend/correct requirement?	NO
Limitations on disclosure?	YES

State of California

Information Practices Act (IPA)

The IPA sets limitations on collection and retention of data for California State departments. It describes individual rights requirements. The IPA sets restrictions on access, use, and disclosure.

Item	Information
Citation(s)	Cal. Civ. Code § 1798 et seq.
Who is Covered?	State agencies, departments, offices, officers, etc.
What information is covered?	Personal Information: any information maintained by an agency that identifies or describes an individual.
Patient breach notification requirement?	YES
Patient access requirement?	YES
Patient amend/correct requirement?	YES
Limitations on disclosure?	YES
Respond to a subpoena?	YES
Private right of action?	YES
Liability for violation	<ul style="list-style-type: none"> • Entity liability • Personal liability (potential job loss)

HIV Test Results

Sets restrictions on access, use, and disclosure of [HIV test results](#).

Item	Information
Citation(s)	Cal. Health & Safety Code § 120975-121023
Who is Covered?	Any person with access to HIV tests
What information is covered?	HIV tests only. “HIV test” means any clinical test, laboratory or otherwise, used to identify HIV, a component of HIV, or antibodies or antigens to HIV. Cal. Health & Safety Code § 120775.
Patient breach notification requirement?	NO
Patient access requirement?	NO
Patient amend/correct requirement?	NO
Limitations on disclosure?	YES
Respond to a subpoena?	NO
Private right of action?	YES
Liability for violation	<ul style="list-style-type: none"> • Entity liability • Personal liability • Criminal liability

Confidentiality of Medical Information Act (CMIA)

The CMIA sets restrictions on access, use, and disclosure.

<i>Item</i>	<i>Information</i>
Citation(s)	Cal. Civ. Code § 56 et seq.
Who is Covered?	Health providers, health plans, and their contractors.
What information is covered?	Medical information ³
Patient breach notification requirement?	Refer to Health Facilities and Data Breach
Patient access requirement?	YES
Patient amend/correct requirement?	NO
Limitations on disclosure?	YES
Respond to a subpoena?	YES
Private right of action?	YES
Liability for violation	Entity liability

³ Note, while CMIA covers privacy of most health information, it does not cover all. Health information covered by Cal. Welf. & Inst. Code §§ 4514, 5328, and 10850 et seq., 42 C.F.R. Part 2, and Cal. Health & Safety Code § 11845.5 are not covered by CMIA.

California Consumer Privacy Act (CCPA)

The CCPA describes individual rights and sets restrictions on access, use, and disclosure.

Item	Information
Citation(s)	Cal. Civ. Code § 1798.100 et seq.
Who is Covered?	For-profit businesses* that collect consumers' personal information and meet certain threshold requirements for annual revenue or number of consumers of whom they receive, buy, sell, or share personal information. *Exempts health providers covered by HIPAA or the CMIA .
What information is covered?	Personal Information*: information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. *Exempts data covered by HIPAA or the CMIA .
Patient breach notification requirement?	NO
Patient access requirement?	YES
Patient amend/correct requirement?	NO
Limitations on disclosure?	YES
Respond to a subpoena?	YES
Private right of action?	YES
Liability for violation	<ul style="list-style-type: none"> • Entity liability • Injunctive or declaratory relief

Patient Access to Health Records Act (PAHRA)

The PAHRA describes a patient’s right of access or denial of access to health information.

<i>Item</i>	<i>Information</i>
Citation(s)	Cal. Health & Safety Code §§ 123100 – 123149.5
Who is Covered?	Health providers
What information is covered?	Medical records
Patient breach notification requirement?	NO
Patient access requirement?	YES
Patient amend/correct requirement?	NO; however, a patient has the right to add a written addendum to the record
Limitations on disclosure?	NO
Private right of action?	YES
Liability for violation	Entity liability

Lanterman-Petris-Short Act (LPS) – Mental Health

The LPS describes privacy requirements and sets restrictions on access, use, and disclosure.

<i>Item</i>	<i>Information</i>
Citation(s)	Cal. Welf. & Inst. Code § 5328 et seq.
Who is Covered?	Generally, county or city mental health departments, state hospitals, or other public or private entities (such as community mental health clinics).
What information is covered?	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 breach notification requirement?	NO
Patient access requirement?	NO
Patient amend/correct requirement?	NO
Limitations on disclosure?	YES
Respond to a subpoena?	NO
Private right of action?	YES
Liability for violation	<ul style="list-style-type: none"> • Entity liability • Personal liability

Lanterman Developmental Disabilities Services Act – Developmental Disabilities

The Lanterman sets restrictions on access, use, and disclosure.

<i>Item</i>	<i>Information</i>
Citation(s)	Cal. Welf. & Inst. Code § 4514
Who is Covered?	California Department of Developmental Services (DDS) and regional centers under contract with the DDS.
What information is covered?	All information and records obtained in the course of providing intake, assessment, and services for persons with developmental disabilities.
Patient breach notification requirement?	NO
Patient access requirement?	NO
Patient amend/correct requirement?	NO
Limitations on disclosure?	YES
Respond to a subpoena?	NO
Private right of action?	YES
Liability for violation	<ul style="list-style-type: none"> • Entity liability • Personal liability

California Substance Use Disorder Records - SUD

California SUD sets restrictions on access, use, and disclosure.

<i>Item</i>	<i>Information</i>
Citation(s)	Cal. Health & Safety Code § 11845.5
Who is Covered?	Entities that are licensed by the California Department of Health Care Services (DHCS) in connection with SUD diagnosis and treatment.
What information is covered?	Information that would identify a patient as having a SUD and allow very limited disclosures of information without patient authorization.
Patient breach notification requirement?	NO
Patient access requirement?	NO
Patient amend/correct requirement?	NO
Limitations on disclosure?	YES
Respond to a subpoena?	NO
Private right of action?	NO

Health Facilities and Data Breach

Breach reporting requirement to licensing entity.

<i>Item</i>	<i>Information</i>
Citation(s)	Cal. Health & Safety Code § 1280.15
Who is Covered?	A clinic, health facility, home health agency, or hospice licensed pursuant to Cal. Health & Safety Code §§ 1204, 1250, 1725, or 1745.
What information is covered?	Medical information
Patient breach notification requirement?	YES
Patient access requirement?	NO
Patient amend/correct requirement?	NO
Limitations on disclosure?	NO
Private right of action?	NO
Liability for violation	Fines levied by state oversight (California Department of Public Health)

Data Breach of Customer Records

Breach reporting requirements for persons and businesses.

<i>Item</i>	<i>Information</i>
Citation(s)	Cal. Civ. Code § 1798.82
Who is Covered?	Persons and businesses conducting business in California
What information is covered?	Personal information as defined in subdivision (h) of Cal. Civ. Code § 1798.82.
Patient breach notification requirement?	YES
Patient access requirement?	NO
Patient amend/correct requirement?	NO
Limitations on disclosure?	NO
Private right of action?	NO
Liability for violation	Entity liability

Public Social Services

This code section sets restrictions on access, use, and disclosure.

<i>Item</i>	<i>Information</i>
Citation(s)	Cal. Welf. & Inst. Code § 10850
Who is Covered?	California Department of Social Services and county welfare departments
What information is covered?	All applications and records concerning any individual made or kept by any public officer or agency in connection with any form of public social services for which grants-in-aid are received from the United States government.
Patient breach notification requirement?	NO
Patient access requirement?	NO
Patient amend/correct requirement?	NO
Limitations on disclosure?	YES
Respond to a subpoena?	NO

Appendix 5 - Additional Resources

The State Health Information Guidance (SHIG) has been posted on the Center for Data Insights and Innovation (CDII) website as a public resource.⁴ The online SHIG will be available for as long as the public and stakeholders find it useful.

Issues and Subjects Not Addressed in SHIG

The SHIG Volume 3 only provides clarifications relating to [disclosure](#) and exchange of [health information](#) to address providing services to persons living with HIV/AIDS in California. Issues outside of this use are not addressed. 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:

- [Privacy](#) and electronic health records
- Electronic signatures
- Process changes within or between organizations
- Technology/system changes and interoperability
- Availability of technology to patient/families (such as email, encryption)
- Implementation of new systems for information collection or sharing
- Legislative/regulatory changes
- Patient preferences (such as sharing information)
- Education materials for patient/patient families
- Universal ID

Resources/References

[California Department of Public Health – Office of AIDS](#)

This site provides a number of resources – including programs available for persons living with HIV/AIDS, a summary of HIV-related laws, fact sheets and legislative highlights.

[California HIV/AIDS Policy Research Centers](#)

The “California HIV Laws” publication was reviewed by the SHIG team for this volume.

⁴<https://www.cdii.ca.gov/compliance-and-policy/>

Appendix 6 – Definitions

Term	Definition
Authorization	<p>A detailed document that gives an entity permission to use and disclose health or otherwise confidential information for purposes specified in the authorization.</p> <p><i>[source: 7 C.F.R. §§ 246.26(d)(4), 272.1(c)(1)(iii); 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.]</i></p>
Business Associate	<p>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 HIPAA covered entity. Business associates may include, but not limited to:</p> <ul style="list-style-type: none"> • organizations that provide services (e.g., claims processing, clearing houses, data analysis, utilization review, quality assurance, billing, legal) on behalf of a HIPAA 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...” • “subcontractor that creates, receives, maintains, or transmits protected health information on behalf of the business associate...” <p>A member of the HIPAA covered entity’s workforce is not a business associate.</p> <p><i>[source: 45 C.F.R. § 160.103 (paraphrased).]</i></p>
Combined Authorization	<p>A single authorization may contain uses and disclosures for multiple purposes. The only limitations are that an authorization for the use or disclosure of psychotherapy notes may not be combined with an authorization for the use or disclosure of other types of protected health information and that an authorization that is a condition of treatment, payment, enrollment, or eligibility may not be combined with any other authorization.</p> <p>In 45 C.F.R. § 164.508(b)(3), HIPAA permits covered entities to combine an authorization for the use or disclosure of protected health information created for purposes of research including treatment of individuals with certain other documents.</p> <p><i>[source: Office of the Assistant Secretary for Planning and Evaluation website</i> https://aspe.hhs.gov/<i>]</i></p>

Term	Definition
Compound Authorization	<p>Combining an authorization for the use or disclosure of protected health information with any other document – this is prohibited by HIPAA.</p> <p><i>[source: Office of the Assistant Secretary for Planning and Evaluation website</i> https://aspe.hhs.gov.]</p>
Confidentiality	<p>A security and privacy principle that works to ensure that information is not disclosed to unauthorized persons.</p> <p><i>[source: 45 C.F.R. §164.304; California Department of Technology website</i> https://cdt.ca.gov.]</p>
Coordination of Care	<p>The deliberate organization of healthcare and related services between two or more providers to facilitate the appropriate delivery of healthcare services.</p> <p><i>[source: Agency for Healthcare Research and Quality website</i> https://www.ahrq.gov/professionals/prevention-chronic-care/improve/coordination/index.html (paraphrased).]</p>
Covered Entity	<p>The following individuals or organizations that directly handle health information:</p> <ul style="list-style-type: none"> • 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 <p><i>[source: 45 C.F.R. § 160.103.]</i></p>
Disclose	<p>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.</p> <p><i>[source: 45 C.F.R. § 160.103 (paraphrased).]</i></p>

Term	Definition
Health Information	<p>Any name in combination with any other information related to the provision of healthcare that can lead a person to reasonably identify the patient.</p> <p>This definition incorporates and synthesizes State of CA and federal definitions, including:</p> <ul style="list-style-type: none"> • Protected Health Information • Electronic Health Information • Medical Information <p>Special note: Health information as used in this 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, or genetic information. [source: <i>Statewide Health Information Policy Manual (SHIPM).</i>]</p>
Health Information Exchange (HIE)	<p>The capability to electronically move health information among disparate healthcare information systems, and maintain the meaning of the information being exchanged.</p> <p>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.</p> <p>[source: <i>Health Information and Management Systems Society (HIMSS) website http://www.himss.org/library/health-information-exchange.</i>]</p>
Health Information Organization (HIO)	<p>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.</p> <p>[source: <i>HIMSS website http://www.himss.org/library/health-information-exchange.</i>]</p>
Health Plan	<p>An individual or group plan that provides, or pays the costs of, healthcare and includes the following, singly or in:</p> <ul style="list-style-type: none"> • 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

Term	Definition
	<ul style="list-style-type: none"> • 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 <p><i>[source: 42 U.S.C. § 300gg-91(a)(2); 45 C.F.R. § 160.103; Cal. Civ. Code § 56.05.]</i></p>
Health Provider	<p>An array of clinicians, licensed health organizations, and entities (including healthcare settings) legally defined by HIPAA and CMIA. Refer to Appendix 4 - Provider Definitions.</p> <p><i>[source: 45 C.F.R. §§ 160.102, 160.103; Cal. Civil Code § 56.10.]</i></p>
Healthcare Operations	<p>Activities relating to covered functions of a business associate, healthcare clearinghouse, health plan, health provider or hybrid entity. Including, but not limited to:</p> <ul style="list-style-type: none"> • 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 <p><i>[source: 45 C.F.R. § 164.501; Cal. Civ. Code § 56.10(c).]</i></p>

Term	Definition
HIV/AIDS Information	<p>Health information specific to a patient’s HIV/AIDS diagnosis or treatment is not specially protected – the only information specially protected is HIV test results. HIV/AIDS information, including HIV status, is considered the same as health information.</p> <p>However, when HIV/AIDS information is the possession of a state or local public health department, it is specially protected under California law.</p> <p><i>[source: Cal. Health & Safety Code § 121025; 17 C.C.R 2500(f).]</i></p>
HIV Status	<p>Status of the individual tested for HIV.</p> <p><i>[source: Cal. Health & Safety Code § 121015.]</i></p>
HIV Test Results	<p>The results of any clinical test, laboratory or otherwise, used to identify HIV and/or AIDS, a component of HIV and/or AIDS, or antibodies or antigens to HIV.</p> <p><i>[source: Cal. Health & Safety Code § 120775(c).]</i></p>
Minimum Necessary	<p>The amount of information, to the extent necessary, to accomplish the intended purpose of a use, disclosure, or request.</p> <p><i>[source: 45 C.F.R. §§ 164.502(b), 164.514(d).]</i></p>
Partner	<p>A person reasonably believed to be a:</p> <ul style="list-style-type: none"> • spouse, or • sexual partner, or • person with whom the patient has shared the use of hypodermic needles. <p><i>[source: Cal. Health & Safety Code § 121015(a).]</i></p>
Partner Notification	<p>Disclosing a patient’s HIV status (without disclosing the patient’s identity) to a partner of a patient who has tested positive for HIV for the purposes of diagnosis, care, and treatment of the partner.</p> <p><i>[source: Cal. Health & Safety Code § 121015.]</i></p>
Patient’s Representative	<p>A person who:</p> <ul style="list-style-type: none"> • 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) <p>A provider using clinical judgment may choose not to deal with an individual as the patient’s representative, if there is a reasonable belief that:</p> <ul style="list-style-type: none"> • the individual has or will abuse/neglect the patient with violence, or • may endanger the patient if the information is provided to the individual; and

Term	Definition
	<ul style="list-style-type: none"> it would not be in the best interest of the patient to deal with the individual as the patient’s representative. <p><i>[source: 45 C.F.R. § 164.502(g), HHS website http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/personalreprs.html.]</i></p>
Privacy	<p>The right of individuals and organizations to control the collection, storage, and dissemination of information about themselves.</p> <p><i>[source: California Department of Technology website https://cdt.ca.gov/security/technical-definitions/.]</i></p>
Public Health Authority	<p>An agency or authority of the United States government, a State, a territory, a political subdivision of a State or territory, or Indian tribe that is responsible for public health matters as part of its official mandate, as well as a person or entity acting under a grant of authority from, or under a contract with, a public health agency.</p> <p><i>[source: 45 C.F.R. § 164.501.]</i></p>
Security	<p>The administrative, physical and technical safeguards in, or protecting, an information system.</p> <p><i>[source: 45 C.F.R. § 164.304; Cal. Health & Safety Code § 1280.18.]</i></p>
Treatment	<p>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.</p> <p><i>[source: 45 C.F.R. § 164.501.]</i></p>

Appendix 7 – Acronyms

Acronym	Meaning
AIDS	Acquired Immunodeficiency Syndrome
CA	Abbreviation for California
CalHHS	California Health and Human Services
CARE	Comprehensive AIDS Resources Emergency Act
CBO	Community-based Organization
CCPA	California Consumer Privacy Act
C.C.R.	California Code of Regulations
CDC	Centers for Disease Control and Prevention
CDII	Center for Data Insights and Innovation
CDPH	California Department of Public Health
C.F.R.	Code of Federal Regulations
CHCF	California Health Care Foundation
CMIA	Confidentiality of Medical Information Act
CMS	Centers for Medicare & Medicaid Services,
DDS	Department of Developmental Services
DHCS	Department of Health Care Services
EHR	Electronic Health Record
EMS	Emergency Medical Services
EMSA	Emergency Medical Services Authority
EMT	Emergency Medical Technician
FERPA	Family Educational Rights and Privacy Act
HIE	Health Information Exchange
HIO	Health Information Organization
HIV	Human Immunodeficiency Virus
HIPAA	Health Insurance Portability and Accountability Act
IPA	Information Practices Act
LPS	Lanterman-Petris-Short Act
MOU	Memorandum of Understanding
PAHRA	Patient Access to Health Records Act
PHI	Protected Health Information
SHIG	State Health Information Guidance
SHIPM	Statewide Health Information Policy Manual
SUD	Substance Use Disorder