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

STATE HEALTH INFORMATION GUIDANCE 5.1

SHARING MINORS AND FOSTER YOUTH HEALTH INFORMATION IN CALIFORNIA

April 2023

CalHHS
California Health & Human Services Agency

Table of Contents

Volume 5.1 – Change Log

Section	Page(s)	Change
Entire document	All	• 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 site information
Purpose of SHIG Volume 5	13	Added sentence to the third paragraph to clarify the intent of SHIG.
Generally Applicable Guidance	19-21	• "Authorization for Release of Protected Information" item – new paragraphs added to end of section: ○ Third paragraph – removed last sentence. ○ New paragraph to clarify that signing is not a requirement of continued treatment. ○ New paragraph regarding the capacity of the minor to consent. • "Psychotherapy Notes" item – removed first sentence regarding psychotherapy notes not referenced in California law to help with clarity.
Scenario 12 – Graphic	70	Updated light green document symbol to read "Foster youth's information may be shared with a valid patient or patient's representative's authorization"
Scenario 13 – Scenario Guidance	74	In the first bullet under the first paragraph, removed the sentence "However, if the minor foster youth has a right to consent to the treatment, then the SCCM must have an authorization from the patient or patient's representative" for clarity.
Scenario 14 – Description	75	In the first bullet under "For example:" – the term "physical health provider" was changed to "health provider" for clarity.
Scenario 14 – Scenario Guidance	77-78	• In the first bullet under the first paragraph, removed the sentence "However, if the minor foster youth has a right to consent to the treatment, then the SCCM must have an authorization from the patient" for clarity.

Section	Page(s)	Change
		• In the CAUTION! paragraph on page 78, several changes were made for clarity – this includes updates to the citations.
Appendix 1 – SHIG Participants	87	Added list of SHIG Development Contributors for Volume 5.1 effort
Appendix 2 – Patient Authorization for Use and Disclosure	88-89	HIPAA Authorization Form Requirements was updated to reflect requirements as well as core elements for a valid HIPAA authorization.
Appendix 7 – Additional Resources	117	Updated first sentence under "Issues and Subjects not Addressed in SHIG" item to remove "only" for clarity.
Appendix 8 – Definitions	125	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

Health providers are challenged with meeting the healthcare needs of California's estimated 9 million+ minors while protecting their right to privacy. Information privacy laws are complex for minors. Sharing health information depends on the minor's ability to consent (e.g., age, emancipation, capacity), the type of health information that may be shared according to different laws (e.g., mental health, sexual health, substance use disorder), and who is sharing and receiving the information. If the minor has a parent/guardian, this also adds to complexity of data sharing (e.g., whether the minor's legal guardian is a parent/guardian, grandparent, aunt, uncle or sibling, non-relative extended family members, or caregiver).

As a subset of minors, health information sharing for California's approximately 60,000 foster youth is crucial so that foster youth, in the Child Welfare System (CWS), receive appropriate healthcare. When a child is removed from his or her home, it is critical that social workers, health providers, caregivers, and parents/guardians have access to the foster youth's health information so that:

- Children continue to receive health and dental care
- Children continue to take any necessary medications
- Health providers have access to children's health histories (e.g., care plans, immunization records, medications) when determining appropriate treatment
- Foster parents and other caregivers understand all the health needs of the children in their care
- Child welfare agencies and juvenile courts can understand the child's health history, summarized within a CWS or probation case plan, and can monitor the health and well-being outcomes of children under their jurisdiction

Health information sharing is key to the coordination of care for minors and/or foster youth between CWS, county probation department, county behavioral health departments, regional centers or centers that serve foster youth living with developmental disabilities, health providers, mental health providers, foster care or other child welfare advocacy groups, child and family teams, multi-disciplinary teams, and the courts. In some cases, service providers may be reluctant to share data due to confusion about how to comply with data privacy laws. Additionally, a health provider may have concerns about damaging the critical patient/provider relationship by sharing information with a parent/guardian or caregiver.

The State of California created this non-binding State Health Information Guidance (SHIG) Volume 5 to help standardize and clarify federal and state law.

In SHIG Volume 5, the State provides guidance about how health information may be shared in the day-to-day practice of providing integrated care and services for minors and foster youth.

The SHIG Volume 5 clarifies existing federal and state laws that affect disclosure and sharing of health information in simple, everyday business language.

The SHIG development process involved extensive input from non-profit, private, community-based, and government organizations involved in the delivery of healthcare and social services. 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 health information can be achieved to effectively provide a minor or foster youth patient with coordinated and integrated care and services while still protecting their right to privacy. Based on this principle and relevant federal and state law, the guidance in this document moves from general to more specific guidance in the following three (3) levels:

1. **General Guidance** identifies key federal and state laws regarding the disclosure of health information to help health providers determine whether and when they may share their minor or foster youth patient's information.
2. **Guidance by Category** provides help in the following situational categories specific to addressing the sharing of health information:
    a. Minors – Health Provider Sharing with Parent/Guardian and Caregiver
    b. Minors – Health Provider Sharing with Health Provider
    c. Foster Youth
        i. Health Provider to Health Provider
        ii. Physical Health Provider to Social Services Case Manager
        iii. Behavioral Health Provider to Social Services Case Manager – Mental Health
        iv. Behavioral Health Provider to Social Services Case Manager – Substance Use Disorder (SUD)
3. **Scenario-Based Guidance** provides answers and clarifications to stakeholder-identified questions through flow-chart graphics and narrative responses in 15 scenarios.

Federal and state laws regarding the privacy of health information clearly allow sharing of health information for many purposes when a patient or patient's representative provides an authorization. Therefore, this guidance focuses on uses and disclosures that do not require an authorization from the patient or the patient's representative. However, there are times when health information may 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. This

guidance is for informational purposes only and should not be construed 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 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 health information. However, it is intended to encourage responsible and appropriate information sharing in California and promote a dialog among health providers and stakeholders regarding what can be done within current federal and state laws. Health providers, parents/guardians, caregivers, patient advocates, health plans and other payers, social services case managers, care coordinators, concerned individuals, 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. The dialog must continue well beyond the SHIG's publication to promote whole person care and address appropriate sharing of minor's and foster youth's health information to protect their right to privacy.

The State encourages readers to use the SHIG to take appropriate next steps for their organizations to improve coordination of services. 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 and coordinated service

While designed to be helpful, the SHIG clarifications will lead to improvements for addressing minor's and foster youth's care 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 8 – 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 9 – 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 8 – Definitions and Appendix 9 – 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.
- **Guidance by Category** – Each guidance by category section presents a general introduction about the category. The introduction may include who is involved in the information sharing, or examples of information sharing situations. This guidance is presented in the following categories:
    - Minors – Health Provider to Parent/Guardian and Caregiver
    - Minors – Health Provider to Health Provider
    - Foster Youth
        i. Health Provider to Health Provider
        ii. Physical Health Provider to Social Services Case Manager

iii. Behavioral Health Provider to Social Services Case Manager – Mental Health
iv. Behavioral Health Provider to Social Services Case Manager – Substance Use Disorder (SUD)

- **Scenario-Based Guidance** – This is guidance that addresses specific questions for each of the scenarios within a category. Each scenario answers a specific question raised by SHIG stakeholders. It uses illustrations to answer common questions regarding disclosure of health information.

  The scenarios focus on the criteria for sharing information without an authorization. However, even when an authorization is 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 health and wellbeing.

  Each scenario has four (4) 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

Legal Caveat

The State Health Information Guidance (SHIG) provides the State of California's non-mandatory guidance regarding disclosure of a minor's or foster youth's health information. The SHIG clarifies existing federal and state laws that affect disclosure and sharing of health 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. 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 information.

The SHIG provides non-binding clarification to help readers working together to share a minor's or foster youth's health information to better understand relevant sections of federal and state 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
- Confidentiality of Medical Information Act (CMIA)
- Lanterman-Petris-Short Act (LPS)
- California Civil Code
- California Family Code
- California Health and Safety Code
- California Welfare and Institutions Code

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

Purpose of SHIG Volume 5

Volume 5 of the State Health Information Guidance (SHIG) combines general guidance and real-life scenarios to clarify federal and state laws related to sharing a minor's or foster youth's health information for the purpose of supporting treatment and coordination of care 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 the patient achieve better health outcomes. However, coordination of care requires sharing of health information in an appropriate, secure, and timely manner between different types of health providers and social services providers as well as a minor's or foster youth's parents/guardians or caregivers.

This SHIG provides non-mandatory, authoritative guidance from the State of California on the uses, disclosures, and protection of health information. This guidance document is not designed to address all sharing challenges currently experienced, but it does address those issues stakeholders identified as their highest priority. The SHIG Volume 5 aims to clarify federal and state laws and regulations for a non-legal audience and to help inform health providers about when, why, and how health information may be shared among care partners – including the minor's or foster youth's parents/guardians or caregivers.

Federal and state laws and regulations regarding the privacy of health information clearly allow the sharing of this information for a wide variety of purposes when a patient or their patient's representative provides an authorization. Therefore, the SHIG focuses on exchange of health information that does not require an authorization from the patient or the patient's representative. However, there are times when sharing health information may only occur with an authorization and the scenarios inform when that must occur. Therefore, because the SHIG is intended to show a path towards sharing, it notes when an authorization is necessary.

The intended audience of the SHIG is the minor or foster youth patient and their parents/guardians or caregivers, health providers, healthcare associations, patient and privacy advocacy organizations, county and local governments, social services agencies, and other interested parties. State entities should refer to the *Statewide Health Information Policy Manual*[1] 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. Use of both general guidance and scenarios helps clarify the State's interpretation of privacy protections in lay language for a general and broad audience of stakeholders.

[1] Refer to: https://www.cdii.ca.gov/compliance-and-policy/statewide-health-information-policy-manual-shipm/

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 health information within California by providing scenario-based guidance in everyday language.

Background of SHIG Volume 5

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 health information in their possession. 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)[2]. The SHIPM provides 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.

Leveraging this experience, CDII created the *State Health Information Guidance* (SHIG) *Volume 1 – Sharing Behavioral Health Information in California*[3] (originally published in January 2018) as non-binding guidance to interpret and clarify state law for non-State entities. Since that publication, CDII has published additional SHIG documents - all documents are posted on the SHIG webpage[4].

The California Health Care Foundation, Archstone Foundation, and the Centers for Medicare and Medicaid Services (CMS) provided CDII with grants to augment the SHIG. In November 2020, CDII launched the SHIG Volume 5 project to provide guidance on health information sharing of minors and foster youth.

SHIG Volume 5 provides clarification of federal and state law targeting the sharing of minors' or foster youths' health information to support the coordination of care and services among health providers as well as to the minor's or foster youth's parents/guardians or caregivers. The sharing of minors' or foster youths' health information is complex due to the varied consent laws, allowing a minor or foster youth to consent to some, but not all, health services. Like the original SHIG, this augmentation will illustrate a path to comply with federal and state privacy laws to address stakeholder challenges in interpreting federal and state privacy laws protecting health information.

The process to develop SHIG Volume 5 tapped on the experience, expertise, and knowledge of a wide-range of 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 to collect initial insights. From this information, the team held virtual sessions with the goal to capture the

[2] Refer to: https://www.cdii.ca.gov/compliance-and-policy/statewide-health-information-policy-manual-shipm/
[3] Refer to: https://www.cdii.ca.gov/compliance-and-policy/state-health-information-guidance-shig/
[4] Refer to: https://www.cdii.ca.gov/compliance-and-policy/state-health-information-guidance-shig/

current barriers to information sharing and gather insights on issues preventing coordination of care and services. Below are themes heard from the stakeholders during these sessions:

- Inconsistent information sharing process
    - Unilateral and bi-directional data sharing challenges; especially county staff sharing information with any external party
    - Staff are risk averse and share little information to avoid error, especially for LGBTQ+ and HIV/AIDS-positive foster youth
    - It is unclear what information County Welfare System (CWS) Medi-Cal eligibility staff can provide to child welfare case management staff
    - Child and Adolescent Needs and Strengths (CANS) form has limitations on sharing substance use disorder (SUD) information (e.g., psychotropic medications)
    - County staff are unclear on how information sharing may occur such as verbally versus written
    - Foster care and probation information sharing is complex due to varying law
- Sharing information for dual agency foster youth between a county and regional center is difficult resulting in the use of multiple Release of Information (ROI) forms
- Lack of clarity about what/when a minor's or foster youth's health information may be shared with a parent/guardian or caregiver
    - Lack of clarity on when a patient or patient's representative authorization is required
- Foster youth caution when providing consent
    - Concern with confidentiality of SUD and probation information – obtain consent from individuals who attend each Child and Family Team (CFT) meeting
    - Foster youth can choose to not share certain information (e.g., sexual transmitted disease (STD) testing, intimate partner violence, reproductive health, behavioral health services, SUD)
- Regulatory/Legal challenges – Health Insurance Portability and Accountability Act (HIPAA), federal regulations on the service providers
    - Burden of HIPAA and other privacy compliance for small organizations
    - In HIPAA, there is a mechanism to use the data for research. However, social services do not have the same mechanism available for research or program effectiveness
- Misunderstanding of allowable uses and disclosures
- Technology challenges
    - Lack of interoperable technology
- Varied processes for providing placement and services
    - County variations, especially with presumptive transfer between counties

- Data sharing agreements – lack of clarity on which type of agreement is needed and what they should cover for larger data exchange
    - Need for a clearly understandable universal authorization

During our closing session, the stakeholders agreed on the final scenarios for this volume of the SHIG.

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 5 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 appropriate exchange of information between all stakeholders – health providers and parents/guardians or caregivers – to improved healthcare outcomes for minors and foster youth.

General Guidance

The State believes appropriate exchange of health information can be achieved to effectively provide a minor or foster youth with coordinated and integrated care while still protecting their right to privacy. The State also understands many health providers choose not to share health information for minors or foster youth 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.

Generally Applicable Guidance

There are numerous federal and state regulatory factors to consider when sharing health information for minors or foster youth. 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 subsections provide broad guidance that generally applies to all the scenarios. Since these 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. The Health Insurance Portability and Accountability Act (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
- Disclosures to a health provider for treatment purposes
- Uses or disclosures made pursuant to a valid patient or patient's representative authorization
- Disclosures to the Secretary of the United States Department of Health and Human Services
- Uses or disclosures required by federal or state law

[45 C.F.R. § 164.502(b).]

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. The health provider should forward a copy of the completed and signed patient or patient's representative authorization form, whenever feasible, as part of

a referral. This is a great assistance to the patients for whom downloading, printing, and forwarding/mailing copies of forms may be burdensome and a barrier to seeking treatment or services.

Many providers believe that a patient or patient's representative authorization that serves 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. HIPAA prohibits compound authorizations.

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

For example, an authorization that includes a consent for treatment is a "compound authorization" while an authorization regarding various types of health information details who the information should be released to is a "combined authorization."

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 SHIG Volume 5 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 – Patient Authorizations for Use or Disclosure for the specific documentation requirements for authorized disclosure forms.

The patient or patient's representative authorization for the use and disclosure of health information must be voluntary and informed. Patients must have an opportunity to understand what they are signing. Consent should be obtained in a way that does not pressure the patient to consent and the patient should understand that they will receive the same services whether or not they choose to consent.

The SHIG does not perform analyses into when a minor has the capacity to consent to treatment. However, it is important to note that the minor's physical or behavioral health provider is the one to make this determination.

Re-Disclosure of Confidentiality of Substance Use Disorder Patient Records (42 C.F.R. Part 2), California Confidentiality of Medical Information Act, and Lanterman-Petris-Short Act Health Information

Health and substance use disorder (SUD) patient-identifying information regulated by 42 C.F.R. Part 2 is specially protected and, once received, may only be re-disclosed under specific conditions. In addition, 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 a patient or patient's representative authorization unless disclosure meets an exception in the law. In addition, the recipient of the SUD patient-identifying information cannot further disclose the information unless the further disclosure is expressly permitted by a patient or patient's representative authorization or as otherwise permitted by 42 C.F.R. Part 2.

While the Lanterman-Petris-Short Act (LPS) is silent on re-disclosure, the privacy protections contained within the LPS continue with the information even after the information has been disclosed. Further disclosure of LPS regulated information must meet an exception within the LPS or be done with patient or patient's representative authorization.
[42 C.F.R. § 2.32; Cal. Welf. & Inst. Code § 5328; State Department of Public Health v. Superior Court (2015) 60 Cal.4th 940, 954.]

Consult with legal counsel if you have any questions about whether other laws and regulations may also have similar restrictions on re-disclosure.

Documentation Requirements for Authorized Disclosures

Specific documentation must be created and maintained for disclosures of SUD patient-identifying information regulated by 42 C.F.R. Part 2 or mental health information regulated by LPS, even when authorized by the minor. 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, refer to 45 C.F.R. § 164.528.

Disclosures of SUD patient-identifying health information regulated by 42 C.F.R. Part 2 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 minor's or foster youth's medical record. The documentation must include the date, circumstance, names of recipient, relationship to minor or foster youth, 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.]

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

Psychotherapy Notes

Based on HIPAA, psychotherapy notes may generally not be released without a valid authorization.
[45 C.F.R. §§ 164.501, 164.508(a)(2).]

Health Information Organizations/Community Health Information Exchange

The establishment and use of a community Health Information Organization (HIO) or Health Information Exchange (HIE) can provide a secure and standard method for the electronic use, disclosure, movement, and storage of patient health information. A secure HIO encourages and supports the appropriate and legal sharing of patient information for the purpose of coordination of care. Patient outcomes are invariably better when multiple providers all have the same patient health information.

The HIO must comply with all of the privacy, security, and administrative requirements applicable to covered entities/business associates (BA) when providing services involving health information.
[42 U.S.C. §§ 17901, 17938; 45 C.F.R. § 160.103.]

Summary of Primary Laws

Sharing a minor's or foster youth's health information must consider a variety of federal and state laws to ensure information privacy and security are addressed. While these federal and state laws prevent disclosure of patient health information, this does not prevent the minor or foster youth patient from sharing their own information with service providers, parents/guardians or caregivers.

The primary federal regulations affecting the use and disclosure of health information include:

- 42 C.F.R. Part 2 - Confidentiality of Substance Use Disorder Patient Records

- 45 C.F.R. Parts 160 through 164 – Health Insurance Portability and Accountability Act (HIPAA)

The primary State of California statutes pertaining to the use and disclosure of health information include:

- Cal. Civ. Code § 56 et seq. – California Confidentiality of Medical Information Act (CMIA)
- Cal. Civ. Code § 1798.100 et seq. – California Consumer Privacy Act (CCPA)
- Cal. Family Code § 6910 – 6911 – Consent by Person Having Care of Minor or by Court
- Cal. Family Code § 6920 – 6930 – Consent by Minor
- Cal. Health & Safety Code § 11845.5 – Registration of Narcotic, Alcohol, or Other Drug Abuse Programs
- Cal. Health & Safety Code § 123100 et seq. – Patient Access to Health Records (PAHRA)
- Cal. Health & Safety Code § 124260 – Mental Health Services for Minors
- Cal. Welf. & Inst. Code §§ 827-832 – Juvenile Case File
- Cal. Welf. & Inst. Code § 10850 – Public Social Services Records
- Cal. Welf. & Inst. Code §§ 17710, 17731, 17732 – Individualized Health Care Plan Team
- Cal. Welf. & Inst. Code §§ 18951, 18961.5, 18961.7, 18964 – Multidisciplinary Teams
- Cal. Welf. & Inst. Code § 5328 et seq. – Lanterman-Petris-Short Act (LPS)

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

The State Health Information Guidance (SHIG) does not address local, city, or county laws or ordinances.

Federal

Confidentiality of Substance Use Disorder Patient Records (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 minor or foster youth as having a SUD and allow very limited disclosures of information without a valid authorization.

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

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 health contractors. Disclosure of limited health information including location, general condition, or death may be released to family members, other relatives, domestic partners, close personal friends, or other persons identified by the minor or foster youth or patient's representative.

California Consumer Privacy Act (Cal. Civ. Code § 1798.100 et seq.)

This law protects the privacy of consumers' personal information collected by for-profit businesses that meet certain threshold requirements for annual revenue or number of consumers of whom they receive, buy, sell, or share personal information. Health providers and information covered by the Health Insurance Portability and Accountability Act (HIPAA) or the Confidentiality of Medical Information Act (CMIA) are exempted from the California Consumer Privacy Act (CCPA) requirements. In addition, non-profit organizations are exempted from the CCPA. All scenarios in the SHIG assume that the CCPA does not apply.

Consent by Person Having Care of Minor or by Court (Cal. Family Code §§ 6910 – 6911)

This law defines when a minor cannot consent to health services.

Consent by Minor (Cal. Family Code §§ 6920 – 6930)

This law defines when a minor can consent to health services.

Registration of Narcotic, Alcohol, or Other Drug Abuse Programs (Cal. Health & Safety Code § 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 substance use disorder (SUD) diagnosis and treatment is confidential and specially protected under this code section. Health information and records may be disclosed only as provided in this code section. CMIA does not regulate these SUD information and records.

Patient Access to Health Records (Cal. Health & Safety Code § 123100 et seq.)

This act allows the patient the right to see and copy their medical records (with some exceptions, such as psychotherapy notes) maintained by health providers. Additionally, it allows the patient to submit written addenda to records that the patient believes to be inaccurate or incomplete.

Mental Health Services for Minors (Cal. Health & Safety Code § 124260)

This law defines the parameters of the minor consenting to mental health treatment.

Juvenile Case File (Cal. Welf. & Inst. Code §§ 827-832)

This law defines the juvenile case file of a foster youth and the confidentiality of the juvenile case file, including when and to whom information in the juvenile case file may be shared. This includes how information may be shared with a foster youth's Child and Family Team. Generally, this law does not apply to health information held by a health provider.

Lanterman-Petris-Short Act (LPS) (Cal. Welf. & Inst. Code § 5328 et seq.)

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

Public Social Services Records (Cal. Welf. & Inst. Code § 10850)

This law protects the privacy of all information collected by any public officer or agency in connection with the administration of public social services in California for which grants-in-aid are received from the United States government.

Individualized Health Care Plan Team (Cal. Welf. & Inst. Code §§ 17710, 17731, 17732)

This law defines the individualized healthcare plan and individualized healthcare plan team to help coordinate the health of a foster youth.

Multidisciplinary Teams (Cal. Welf. & Inst. Code §§ 18951, 18961.5, 18961.7, 18964)

These statutes establish multidisciplinary teams and child abuse multidisciplinary teams for a foster youth, and how information, including health information, may be shared with these teams.

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.

Minors – Health Provider to Parent/Guardian and Caregiver

Introduction

In California, certain minors have the right to limit access of their health information just like adults have the right to limit access. A parent's/guardian's or caregiver's ability to access a minor's health information depends on whether the minor has the right and/or capacity to consent for the treatment, the type of treatment provided, and the site/location of the treatment.

In general, California law gives certain minors the legal right to consent to their own healthcare depending on the type of treatment, their age, and/or their capacity to make decisions. When minors can lawfully consent to a health service, they also gain control over who may access their health information for those services. A minor does not have to actually consent to the healthcare service - they just need to have the ability to consent to the healthcare services under the law. Sometimes California law requires a health provider to give parents and guardians a minor's health information even if the minor has a right to consent to their own treatment. However, federal law requires the minor agree to the disclosure, when a minor can give consent.

This section provides guidance on the following information sharing situations:

- Health provider sharing a minor's health information with a parent/guardian regarding a medical service when the minor **cannot give consent** (Scenario 1).
- Health provider sharing a minor's health information with a caregiver regarding a medical service when the minor **cannot give consent** (Scenario 2).
- Health provider sharing a minor's health information with a parent/guardian or caregiver regarding a medical service when the minor **can give consent**. Guidance is provided based on the type of service:
    - Physical Health (Scenario 3)
    - Sexual Assault (Scenario 4)
    - Mental Health (Scenario 5)
    - Substance Use Disorder (Scenario 6)

Scenario 1 – Health Provider to Parent/Guardian – Minor Cannot Consent

Description

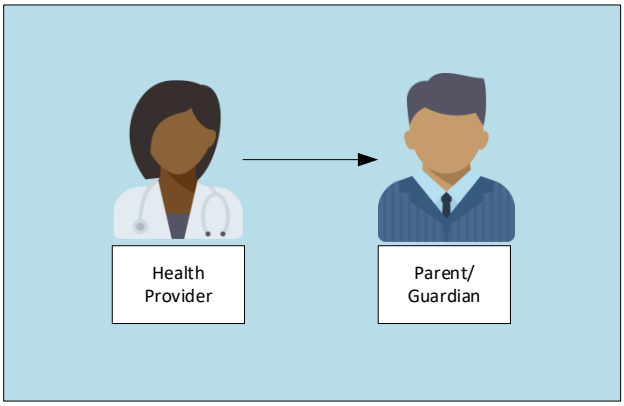
A minor's parent/guardian (or limited guardian, refer to guidance below) asks the health provider for the minor's health information. The minor cannot lawfully provide consent for the treatment or medical service.

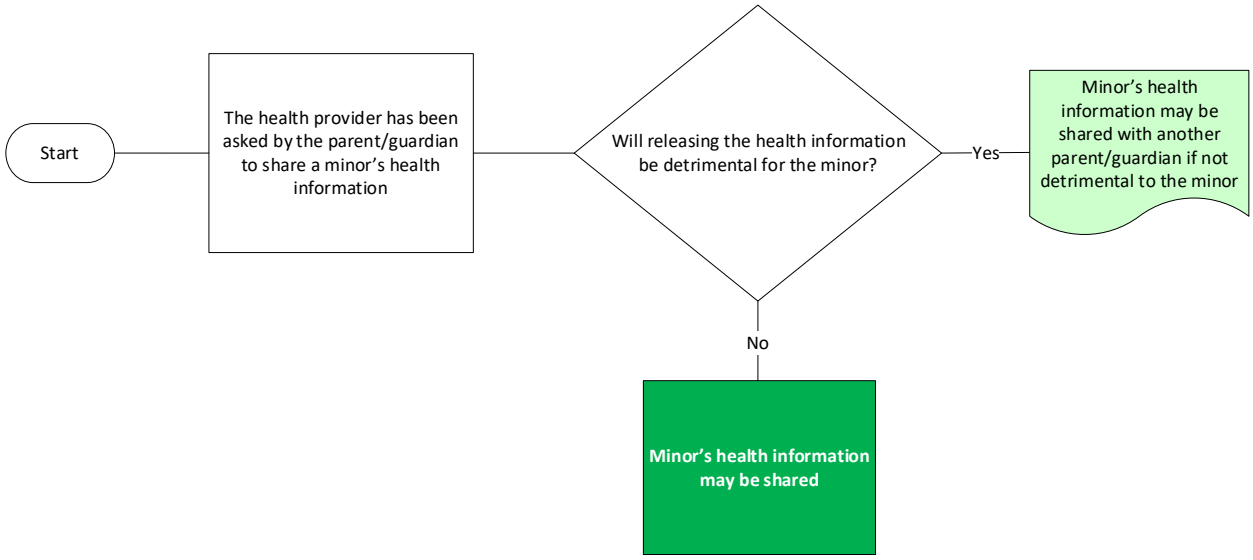
What health information about the minor can a health provider share with a parent/guardian when the minor cannot give consent?

Important Scenario Guidance Assumptions:

- Minor cannot legally consent for the medical service
- There is no patient or patient's representative authorization
- The minor is not emancipated or a self-sufficient minor
- The minor is not a foster youth
- The minor is not a ward of the court
- There is no medical emergency
- There is no court order

Graphic – Health Provider to Parent/Guardian – Minor Cannot Consent





Scenario Guidance – Health Provider to Parent/Guardian – Minor Cannot Consent

Generally, a parent or guardian has the right to request and receive access to their minor's health information when the minor cannot legally consent for the medical service.
[45 C.F.R. § 164.502(g); Cal. Civ. Code §§ 56.10(b)(7), 56.11; Cal. Health & Safety § 123110.]

A parent/guardian can establish another person as a limited guardian to make healthcare decisions for the minor as described below:

- If a parent/guardian has signed a caregiver affidavit, the person identified in the caregiver affidavit has the limited right to access the minor's health information to make healthcare decisions as described in the caregiver affidavit.
  [45 C.F.R. § 164.502(g); Cal. Civ. Code § 56.10(b)(7); Cal. Family Code § 6550; Cal. Health & Safety § 123110.]
- If a parent/guardian or a person with a caregiver affidavit has designated another adult in writing to make certain medical decisions for the minor, the designated adult has the limited right to access the minor's health information as needed to make those decisions.
  [45 C.F.R. § 164.502(g); Cal. Civ. Code § 56.10(b)(7); Cal. Family Code § 6910; Cal. Health & Safety § 123110.]

The health provider may use their professional judgement to assess the situation and deny access to a parent/guardian if they determine that disclosure of health information would have a detrimental effect, substantial harm, or negative impact on the provider's professional relationship with the minor patient or the minor's physical safety or psychological well-being.
[45 C.F.R. §§ 164.502(g), 164.524; Cal. Health & Safety Code § 123115(a)(2).]

A parent/guardian can seek review of a denial of access to the minor's health information.
[45 C.F.R. §§ 164.502(g), 164.524.]

Citations and Related Guidance

- 45 C.F.R. § 164.502(g).
- 45 C.F.R. § 164.524.
- Cal. Civ. Code § 56.10(b)(7).
- Cal. Civ. Code § 56.11.
- Cal. Civ. Code § 56.1007.
- Cal. Family Code § 6550.
- Cal. Family Code § 6910.

- Cal. Health & Safety Code § 123110.
- Cal. Health & Safety Code § 123115(a)(2).
- Appendix 2 – Patient Authorization for Use or Disclosure.
- Appendix 3 – Caregiver's Authorization Affidavit.

Scenario 2 – Health Provider to Caregiver – Minor Cannot Consent

Description

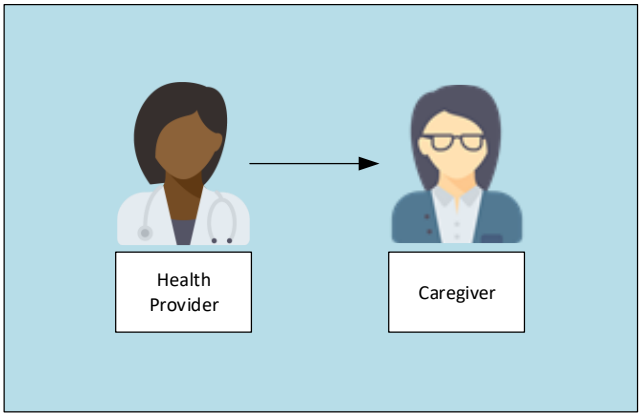
A minor's caregiver asks the health provider for the minor's health information. The minor cannot lawfully provide consent for the treatment or medical service.

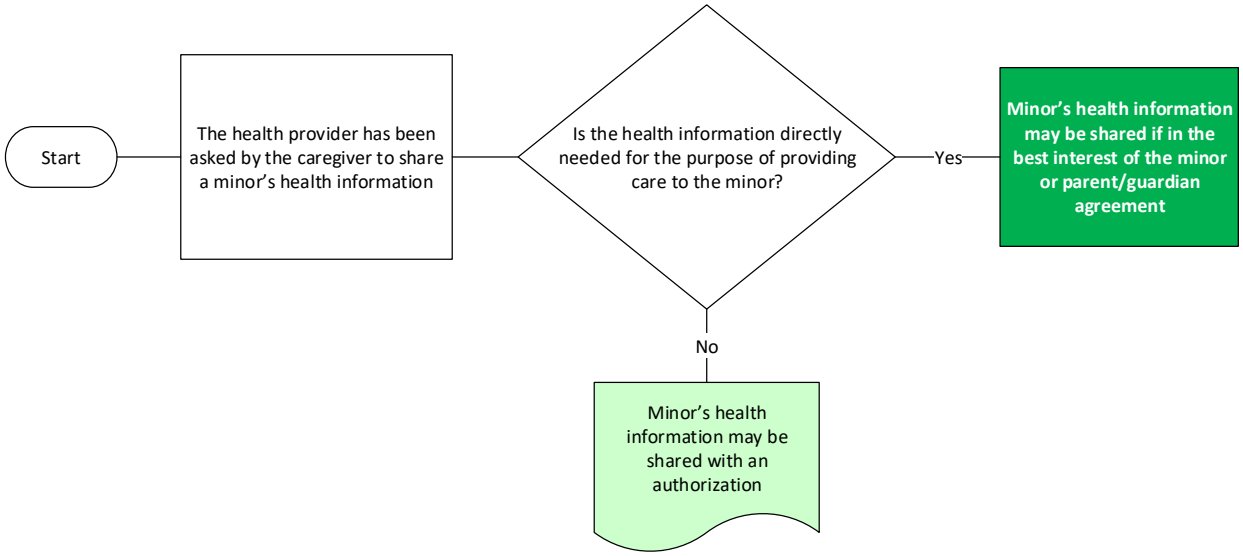
What health information about the minor can a health provider share with a caregiver when the minor cannot give consent?

Important Scenario Guidance Assumptions:

- Minor cannot legally consent for the medical service
- There is no patient or patient's representative authorization
- The minor is not emancipated or a self-sufficient minor
- The minor is not a foster youth
- The minor is not a ward of the court
- There is no medical emergency
- There is no court order

Graphic – Health Provider to Caregiver – Minor Cannot Consent





Scenario Guidance – Health Provider to Caregiver – Minor Cannot Consent

When a caregiver does not have the right to make healthcare decisions for the minor, their access to the minor's health information is limited to specific information directly needed to provide care to the minor. This information should not include anything that is unnecessary to provide care to the minor (e.g., diagnosis).
[45 C.F.R. § 164.510(b); Cal. Civ. Code § 56.1007.]

The health provider may use their professional judgement to assess the situation and determine if disclosure of health information to caregiver is in the best interest of the minor.
[45 C.F.R. § 164.510(b); Cal. Civ. Code § 56.1007.]

Citations and Related Guidance

- 45 C.F.R. § 164.510(b).
- Cal. Civ. Code § 56.1007.
- Appendix 2 – Patient Authorization for Use or Disclosure.

Scenario 3 – Health Provider to Parent/Guardian or Caregiver – Physical Health – Minor Can Consent

Description

A minor's parent/guardian or caregiver asks the minor's health provider for health information about the health services the minor has consented to receive. For this scenario, health services only include:

- Pregnancy (Cal. Family Code § 6925)
- Contraception (Cal. Family Code § 6925)
- Abortion (Cal. Family Code § 6925)
- Infectious, contagious communicable diseases (Cal. Family Code § 6926)
- Sexually transmitted diseases (Cal. Family Code § 6926)
- HIV/AIDS (Cal. Family Code § 6926) – refer to *SHIG Volume 3 – Sharing HIV/AIDS Information in California*[5]
- Intimate partner violence (Cal. Family Code § 6930) – if it is sexual assault or rape, refer to Scenario 4 - Health Provider to Parent/Guardian or Caregiver – Sexual Assault – Minor Can Consent

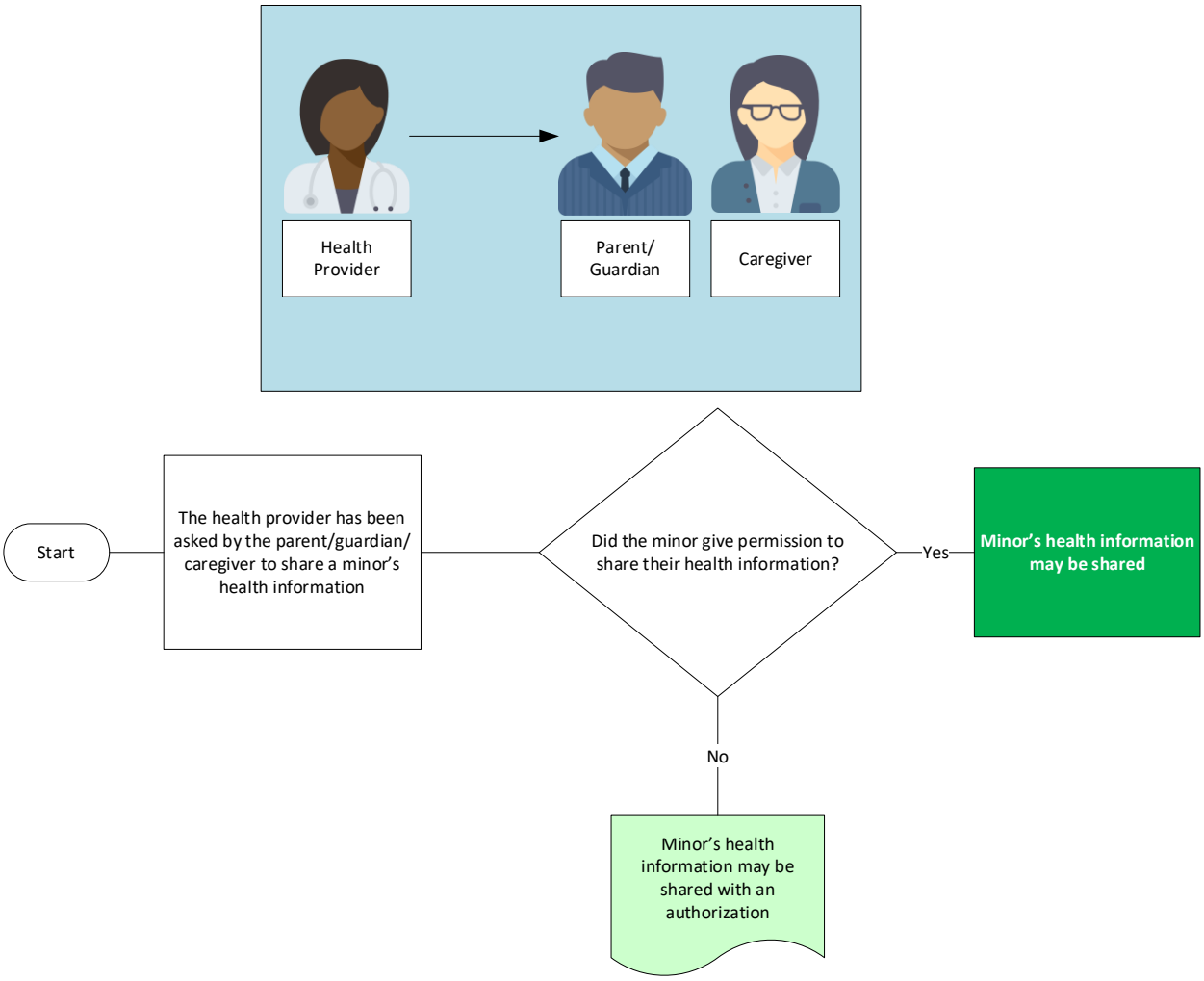
What health information about the minor can a health provider share with a parent/guardian or caregiver when the minor can give consent?

[5] https://www.cdii.ca.gov/compliance-and-policy/state-health-information-guidance-shig/

Important Scenario Guidance Assumptions:

- The minor can legally consent for the medical service, has capacity and is available
- Organizations participating in this information exchange are not subject to California Consumer Privacy Act
- There is no patient or patient's representative authorization
- Minor has not requested that a parent/guardian or caregiver act as their patient representative
- The minor is not emancipated, or a self-sufficient minor
- The minor is not a foster youth
- The minor is not a ward of the court
- There is no medical emergency
- There is no child abuse
- There is no court order

Graphic – Health Provider to Parent/Guardian or Caregiver – Physical Health – Minor Can Consent



Scenario Guidance – Health Provider to Parent/Guardian or Caregiver – Physical Health – Minor Can Consent

Generally, in California, when a minor has the legal right to consent to a health service, the minor also has the right to restrict access to the information about that health service. So, a minor who has the right to consent to a health service also has the right to refuse another person, including the minor's parents, access to that information. Similar to adults, a health provider cannot disclose a minor's health information to a parent/guardian or caregiver when the minor can legally consent for the medical service. Generally, a health provider may disclose a minor's health information to a parent/guardian or caregiver with a signed authorization from the minor patient.
[45 C.F.R §§ 164.502(g), 164.508; Cal. Civ. Code § 56.11(c); Cal. Family Code §§ 6920-6930; Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).]

A variety of individuals (such as family members, close friends, babysitters) may be involved in providing post-treatment care to the minor. The Health Insurance Portability and Accountability Act (HIPAA) and Confidentiality of Medical Information Act (CMIA) permit sharing of health information directly related to the minor's care with individuals providing care without an authorization if the minor agrees to the disclosure or has an opportunity to object to the disclosure but does not. This information should not include anything that is unnecessary to provide care to the minor (e.g., diagnosis).
[45 C.F.R. § 164.510(b); Cal. Civ. Code § 56.1007.]

If a parent/guardian or caregiver wants access to a minor's health information (beyond post-treatment care information), they must have the minor's authorization.
[45 C.F.R. § 164.508; Cal. Civ. Code § 56.11(c).]

If the above conditions are not met, the minor's health information can be shared with a patient authorization.
[45 C.F.R. § 164.508; Cal. Civ. Code § 56.11(c).]

Citations and Related Guidance

- 45 C.F.R. § 164.502(g).
- 45 C.F.R. § 164.508.
- 45 C.F.R. § 164.510(b).
- Cal. Civ. Code § 56.1007.
- Cal. Civ. Code § 56.11(c).
- Cal. Family Code §§ 6920–6930.

- Cal. Health and Safety Code § 123110(a).
- Cal. Health and Safety Code § 123115(a)(1).
- Scenario 4 - Health Provider to Parent/Guardian or Caregiver – Sexual Assault – Minor Can Consent.
- Appendix 2 – Patient Authorization for Use or Disclosure.

Scenario 4 – Health Provider to Parent/Guardian or Caregiver – Sexual Assault – Minor Can Consent

Description

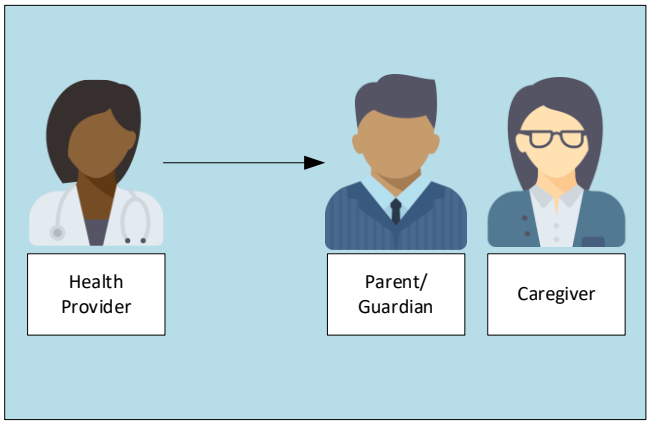
A minor who may have/has been sexually assaulted – including rape – may consent to medical care related to the diagnosis, treatment and collection of medical evidence associated with the assault. A minor's parent/guardian or caregiver asks the health provider for health information about what services their minor has received or specific information collected by the health provider during the treatment services.

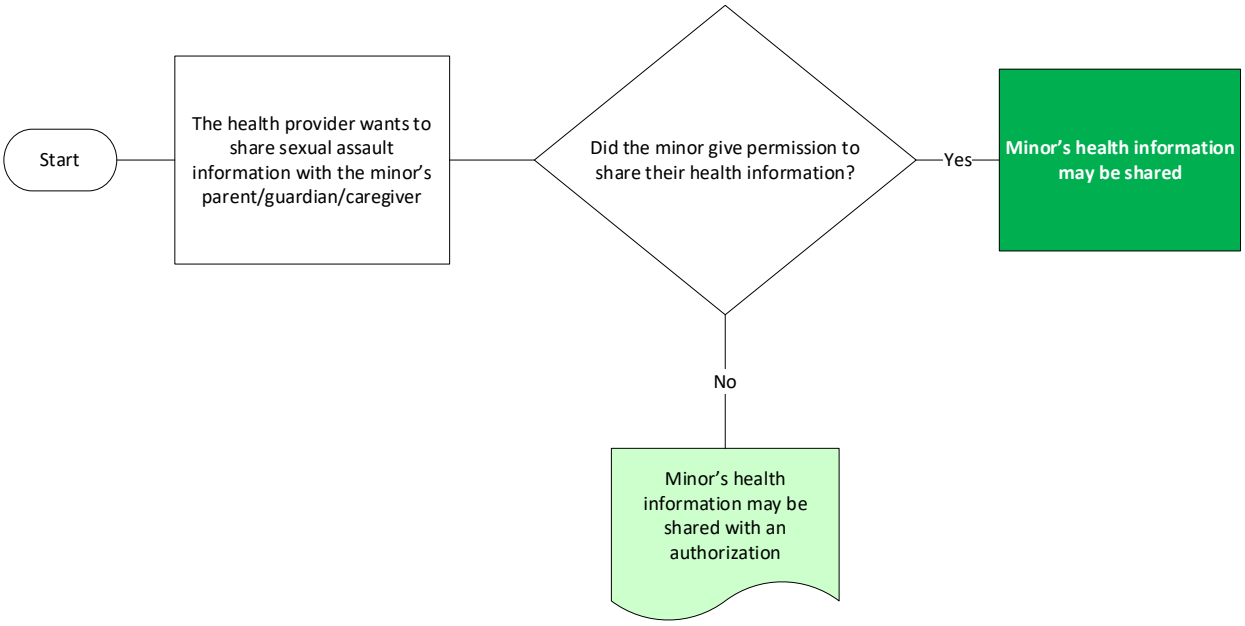
What health information about the minor can a health provider share with a parent/guardian or caregiver when a minor can give consent?

Important Scenario Guidance Assumptions:

- The minor can legally consent for the medical service, has capacity and is available
- Organizations participating in this information exchange are not subject to California Consumer Privacy Act
- There is no patient or patient's representative authorization
- Minor has not requested that a parent/guardian or caregiver act as their patient representative
- The minor is not emancipated, or a self-sufficient minor
- The minor is not a foster youth
- The minor is not a ward of the court
- There is no medical emergency
- There is no child abuse
- There is no court order

Graphic – Health Provider to Parent/Guardian or Caregiver – Sexual Assault – Minor Can Consent





Scenario Guidance – Health Provider to Parent/Guardian or Caregiver – Sexual Assault – Minor Can Consent

In California, a minor who is 12 years old or older has the right to consent to medical care related to a rape and any minor, regardless of age, has the right to consent to medical care related to sexual assault. Sexual assault, for the purposes of this scenario, is defined generally to be rape, sodomy, and oral copulation.
[Cal. Family Code §§ 6927 - 6928; American Academy of Pediatrics v. Lungren (16 Cal.4th 307, 317) (dicta).]

California law requires the sexual assault health provider to attempt to contact a minor's parent or guardian and document the attempt in the minor's medical record. Specifically, the provider must document the date and time of the attempted contact and whether it was successful. This requirement does not apply if the health provider believes the parent/guardian committed the assault. However, because federal regulations provide greater privacy protections to patients than California law, the health provider may only notify the minor's parent/guardian if the minor agrees to the disclosure.
[45 C.F.R. § 160.203; Cal. Family Code § 6928(c).]

If a parent/guardian or caregiver wants access to a minor's health information, they must have the minor's permission. The health provider must ask for the minor's permission to disclose their health information. The health provider must give the minor time to object to the disclosure.
[45 C.F.R § 164.510(b); Cal. Civ. Code § 56.1007.]

If the above conditions are not met, the minor's health information can be shared with a patient authorization.
[45 C.F.R. § 164.508; Cal. Civ. Code § 56.11(c).]

Citations and Related Guidance

- 45 C.F.R. § 160.203.
- 45 C.F.R. § 164.508.
- 45 C.F.R. § 164.510(b).
- Cal. Civ. Code § 56.1007.
- Cal. Civ. Code § 56.11(c).
- Cal. Family Code §§ 6927 - 6928.
- American Academy of Pediatrics v. Lungren (16 Cal.4th 307, 317) (dicta).
- Appendix 2 – Patient Authorization for Use or Disclosure.

Scenario 5 – Health Provider to Parent/Guardian or Caregiver – Mental Health – Minor Can Consent

Description

A minor's parent/guardian or caregiver asks the health provider for mental health information about the mental health services their minor has consented to receive.

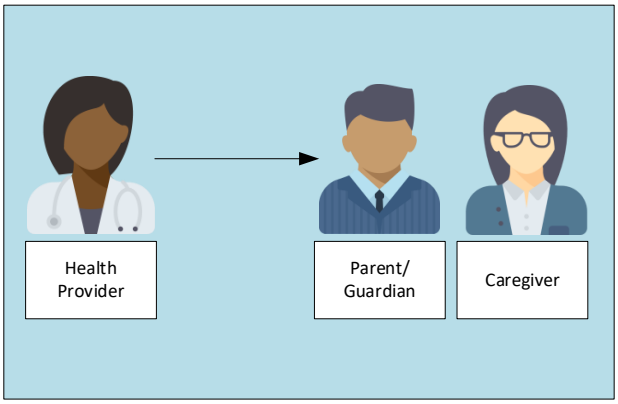
CAUTION! – this scenario does not include mental health information covered by Lanterman-Petris-Short (LPS).

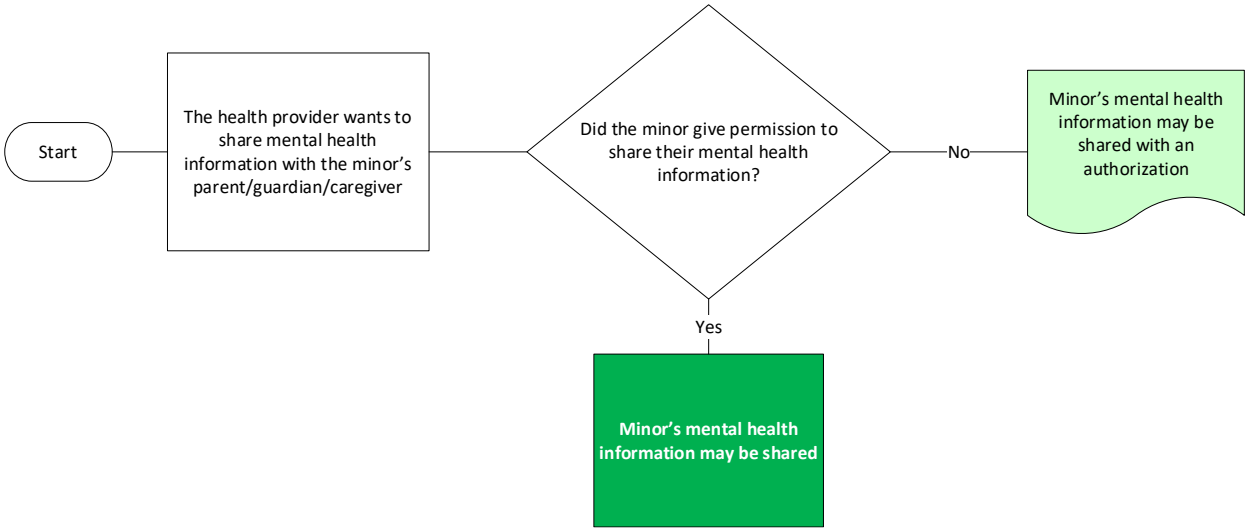
What mental health information about the minor can a health provider share with a parent/guardian or caregiver when the minor can give consent?

Important Scenario Guidance Assumptions:

- The minor can legally consent for the medical service, has capacity and is available
- LPS is not included in this scenario
- Organizations participating in this information exchange are not subject to California Consumer Privacy Act
- There is no patient or patient's representative authorization
- Minor has not requested that a parent/guardian or caregiver act as their patient representative
- The minor is not emancipated, or a self-sufficient minor
- The minor is not a foster youth
- The minor is not a ward of the court
- There is no medical emergency
- There is no court order

Graphic – Health Provider to Parent/Guardian or Caregiver – Mental Health – Minor Can Consent





Scenario Guidance – Health Provider to Parent/Guardian or Caregiver – Mental Health – Minor Can Consent

In most circumstances, when a minor has the right to consent to mental health services, the health provider cannot disclose the minor's health information with a parent/guardian without the minor's signed patient authorization.

California law requires that an outpatient mental health provider treating or counseling a minor to include the involvement of minor's parent or guardian in the minor's treatment. However, because federal law provides greater privacy protections, federal law requires that a minor must agree to share their information with a parent or guardian.
[45 C.F.R. §§ 160.203, 164.502(g); Cal. Health & Safety Code § 124260(b) & (c).]

CAUTION! – this scenario does not include mental health information covered by the LPS.

The minor's health information can only be shared with a minor's caregiver with a patient or patient's representative authorization.
[45 C.F.R. § 164.508; Cal. Civ. Code § 56.11.]

Citations and Related Guidance

- 45 C.F.R. § 160.203.
- 45 C.F.R. § 164.502(g).
- 45 C.F.R. § 164.508.
- Cal. Civ. Code § 56.11.
- Cal. Health & Safety Code § 124260(b) & (c).
- Appendix 2 – Patient Authorization for Use or Disclosure.

Scenario 6 – Health Provider to Parent/Guardian or Caregiver – Substance Use Disorder – Minor Can Consent

Description

A minor's parent/guardian or caregiver asks the health provider for substance use disorder (SUD) patient-identifying information about the SUD services the minor has consented to receive.

CAUTION! This scenario does not include "replacement narcotic abuse treatment." *[Cal. Family Code § 6929(e).]*

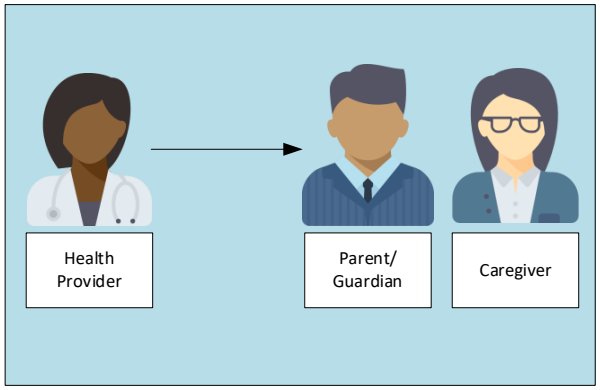
Note: California law specifically requires the health provider for this scenario to be a certified "physician and surgeon."

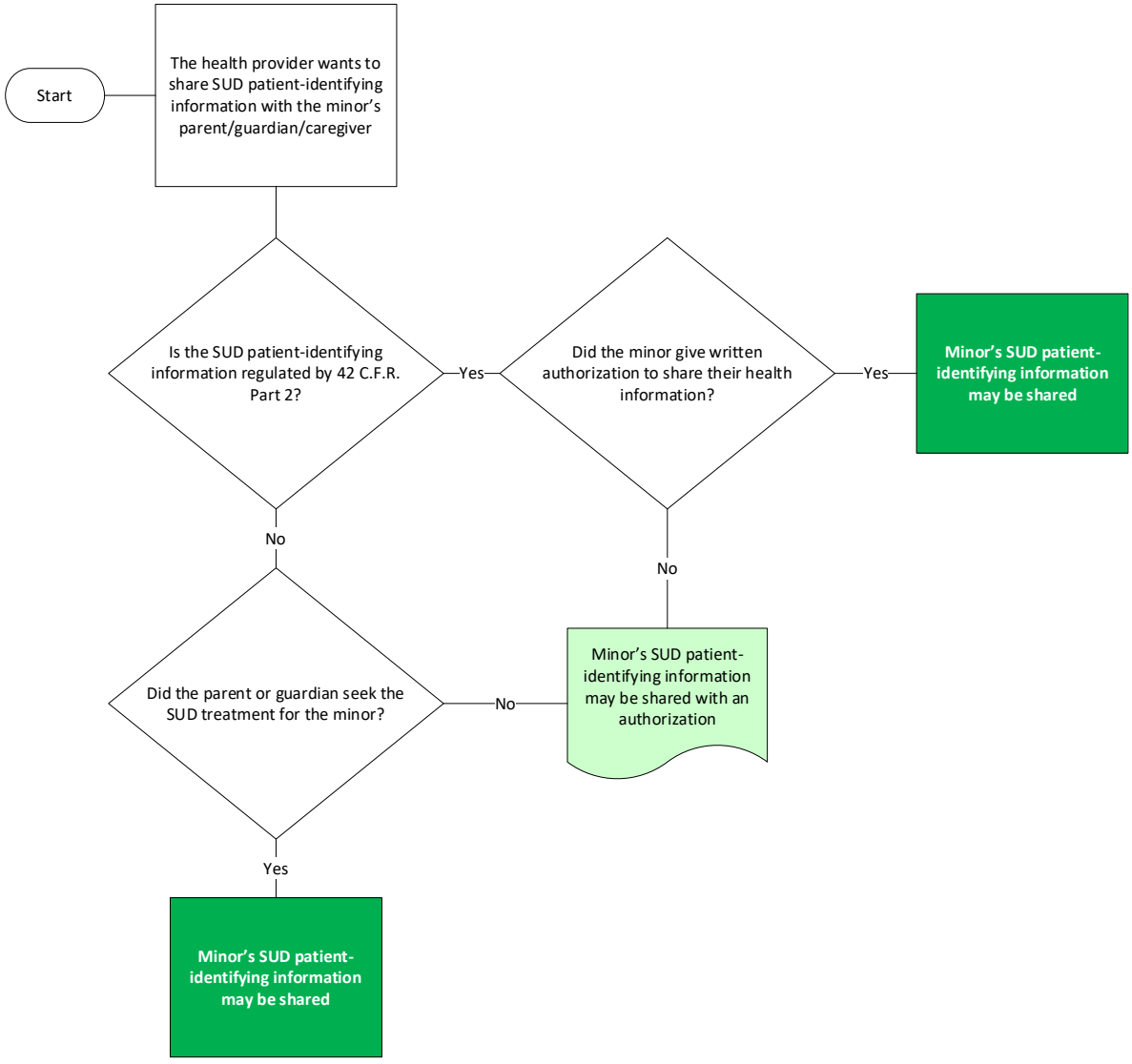
What SUD patient-identifying information about the minor can a health provider share with a parent/guardian or caregiver when the minor can give consent?

Important Scenario Guidance Assumptions:

- The minor can legally consent for the medical service, has capacity and is available
- Organizations participating in this information exchange are not subject to California Consumer Privacy Act
- There is no patient or patient's representative authorization
- Minor has not requested that a parent/guardian or caregiver act as their patient representative
- The minor is not emancipated, or a self-sufficient minor
- The minor is not a foster youth
- The minor is not a ward of the court
- There is no medical emergency
- There is no court order

Graphic – Health Provider to Parent/Guardian or Caregiver – Substance Use Disorder – Minor Can Consent





Scenario Guidance – Health Provider to Parent/Guardian or Caregiver – Substance Use Disorder – Minor Can Consent

Substance use disorder (SUD) patient-identifying information is specially protected. The health provider must first determine whether they are regulated by federal SUD regulations (42 C.F.R. Part 2) or whether they are licensed by the California Department of Health Care Services (DHCS). Consult with your legal counsel to understand which regulations apply to your organization. Refer to Appendix 6 – Who is Subject to…? for more information on whether you are subject to SUD regulations.

Federal law specially protects SUD patient-identifying information. Federal law regulates federally assisted SUD treatment programs and SUD patient identifying-information can be disclosed with the minor's authorization. Since federal assistance is broadly defined in regulations and includes Medicare and Medicaid (Medi-Cal) payments, a significant percentage of SUD patient-identifying information falls under the strict federal regulations. Refer to Appendix 6 – Who is Subject to…? for more information on federally assisted SUD treatment programs.
[42 C.F.R. Part 2.]

While the Health Insurance Portability and Accountability Act (HIPAA) permits sharing health information without an authorization to a caregiver with the patient's permission, other federal and state laws do not. If the health information is regulated by 42 C.F.R. Part 2 or the health provider is licensed by DHCS, an authorization is necessary for the disclosure of SUD patient-identifying information.
[42 C.F.R. § 2.12; 45 C.F.R. § 164.510(b)(1)(i); Cal. Health & Safety Code § 11845.5.]

California law requires that a health provider treating or counseling a minor to include the involvement of minor's parent or guardian in the minor's treatment. However, 42 C.F.R. Part 2 and HIPAA provide greater privacy protections than state law. If the health information is regulated by 42 C.F.R. Part 2 or by HIPAA, the SUD patient-identifying information may only be shared with the minor's authorization.
[42 C.F.R. § 2.14; 45 C.F.R. § 160.203, 164.502(g); Cal. Family Code § 6929(c).]

State law also allows the parent or guardian to seek SUD treatment for their minor, even if the minor does not consent to the medical care. Under these circumstances, the physician and surgeon must disclose the minor's health information to the parent or guardian, even if the minor does not agree to the disclosure. However, if the health information is regulated by 42 C.F.R. Part 2, the SUD patient-identifying information may only be shared with the minor's authorization.
[42 C.F.R. § 2.14; 45 C.F.R. §§ 160.203, 164.502(g); Cal. Family Code § 6929(f) and (g); Cal. Health & Safety Code § 11845.5(c)(4).]

CAUTION! – for this scenario, California law specifically requires the health provider to be a certified "physician and surgeon."

If none of the above conditions are met, then the SUD patient-identifying information can be shared with the patient or patient's representative authorization.
[42 C.F.R. § 2.31; 45 C.F.R. § 164.508; Cal. Civ. Code § 56.11; Cal. Health & Safety Code § 11845.5.]

Citations and Related Guidance

- 42 C.F.R. Part 2.
- 45 C.F.R. § 160.203.
- 45 C.F.R. § 164.502(g).
- 45 C.F.R. § 164.508.
- 45 C.F.R. § 164.510(b)(1)(i).
- Cal. Civ. Code § 56.11.
- Cal. Family Code § 6929.
- Cal. Health & Safety Code § 11845.5.
- Appendix 2 – Patient Authorization for Use or Disclosure.
- Appendix 6 – Who is Subject to…?.

Minors – Health Provider to Health Provider

Introduction

Health providers need to share various health information with other health providers to provide effective integrated treatment and coordination of care, which involves planning and organizing a minor's care. In general, health information can be shared for treatment and diagnosis purposes between a minor's health providers. However, behavioral health information, unlike other health information, is specially protected in federal and state law which restrict disclosure of substance use disorder (SUD) patient-identifying behavioral health information.

Health providers include an array of clinicians, facilities, licensed healthcare providers, unlicensed healthcare providers, and licensed organizations and entities. The Health Insurance Portability and Accountability Act (HIPAA) uses the term "Health Care Providers", while the California Confidentiality of Medical Information Act (CMIA) uses the term "Provider of Health Care". The types of health providers under HIPAA and CMIA are included in Appendix 4 – Provider Definitions. For purposes of this Guidance, the use of health provider can include any of the entities found in the appendix.

This section provides guidance on the following health provider information sharing situations:

- Health provider sharing a minor's health information with another health provider (Scenario 7).
- Health provider sharing a minor's mental health information with a behavioral health provider (Scenario 8).
- Behavioral health provider sharing a minor's mental health information with a health provider (Scenario 9).
- Health provider sharing a minor's SUD patient-identifying information with a behavioral health provider (Scenario 10).
- Behavioral health provider sharing a minor's SUD health information with a health provider (Scenario 11).

Scenario 7 – Health Provider to Health Provider

Description

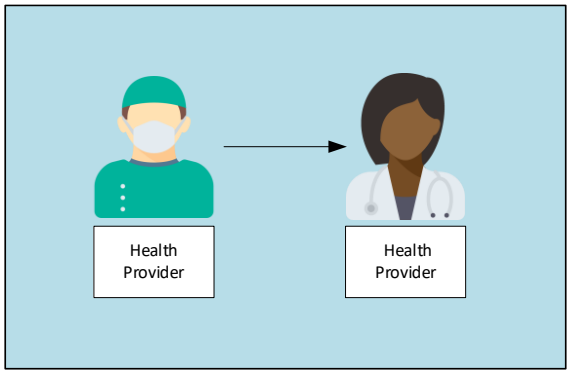
To provide effective treatment and coordination of care, a health provider needs a minor's health information from another health provider.

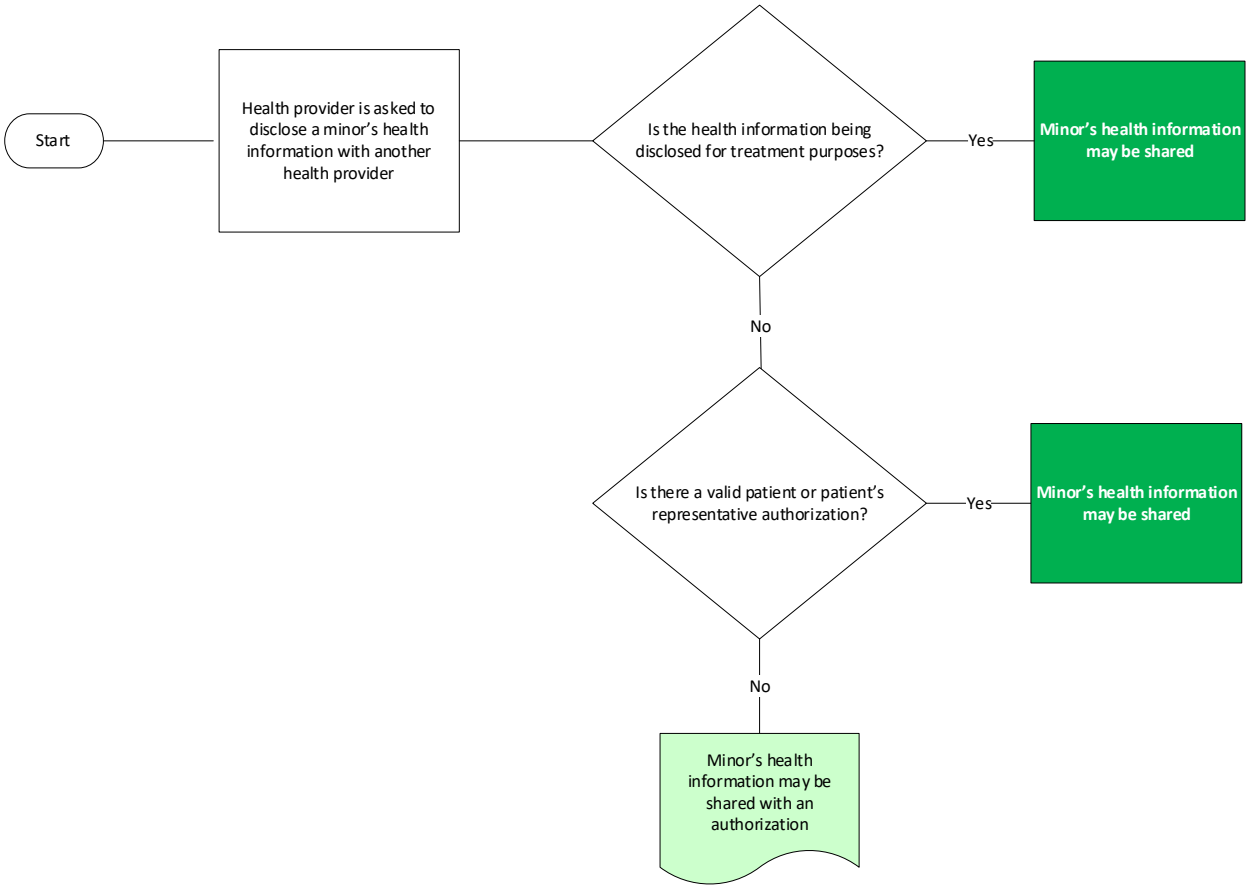
What health information about a minor can a health provider share with another health provider for treatment purposes?

Important Scenario Guidance Assumptions:

- The releasing health provider is subject only to the Health Insurance Portability and Accountability Act (HIPAA) and/or the Confidentiality of Medical Information Act (CMIA)
- Organizations participating in this information exchange are not subject to California Consumer Privacy Act
- There is no patient or patient's representative authorization
- There is no court order
- There is no medical emergency

Graphic – Health Provider to Health Provider





Scenario Guidance – Health Provider to Health Provider

A minor's health information can generally be shared for diagnosis and treatment purposes without a patient authorization. Health information includes information relating to the past, present, or future health status of an individual (e.g., diagnoses, treatment information, medical test results, and prescription information) created, collected, transmitted, or maintained by health providers that are covered entities or otherwise regulated by CMIA.

A health provider may disclose health information to another health provider for treatment purposes.
[45 C.F.R. § 164.506; Cal. Civ. Code § 56.10(c)(1).]

If the health provider is not sharing for treatment purposes, a valid patient or patient's representative authorization may be required. There are other exceptions (e.g., payment and healthcare operations) that allow sharing of health information without an authorization that are not covered in this SHIG volume.
[45 C.F.R. § 164.508; Cal. Civ. Code § 56.11(c).]

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(c).
- Appendix 2 – Patient Authorization for Use or Disclosure.

Scenario 8 – Health Provider to Behavioral Health Provider – Mental Health

Description

To provide effective treatment and coordinated care, a behavioral health provider needs a minor's health information from a health provider, such as prescribed medications, known allergies, illnesses, or conditions or medications that may negatively interact with psychotropic medications or behavioral health treatments.

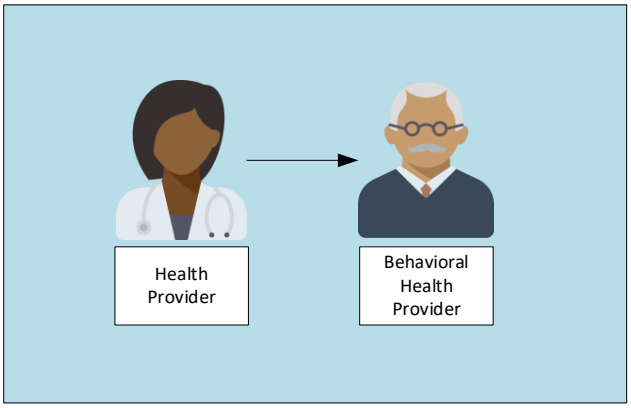
CAUTION! – refer to Scenario 10 – Health Provider to Behavioral Health Provider – Substance Use Disorder for sharing substance use disorder health information.

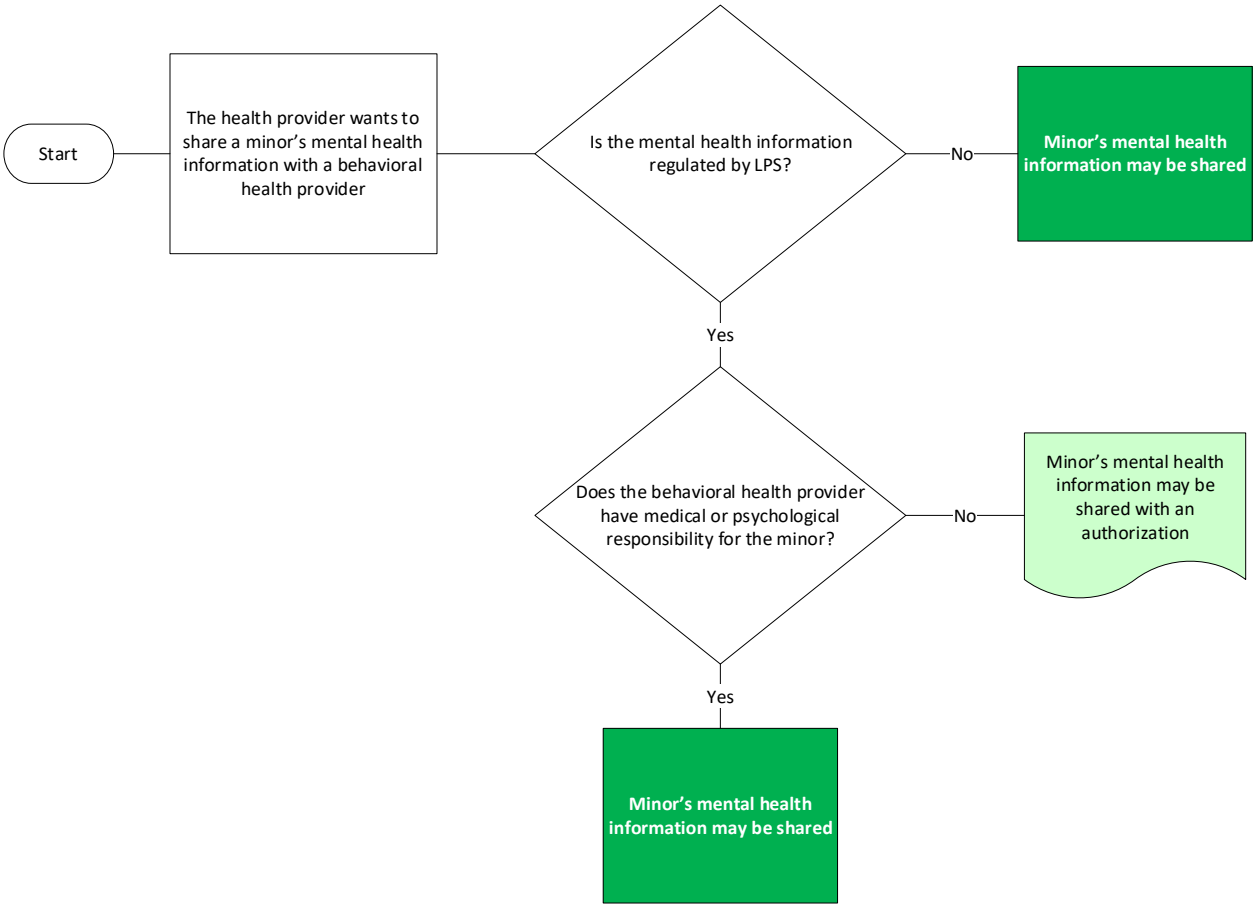
What health information about a minor can a health provider share with a behavioral health provider to provide treatment to the minor?

Important Scenario Guidance Assumptions:

- Organizations participating in this information exchange are not subject to California Consumer Privacy Act
- There is no patient or patient's representative authorization
- There is no medical emergency
- There is no court order

Graphic – Health Provider to Behavioral Health Provider – Mental Health





Scenario Guidance – Health Provider to Behavioral Health Provider – Mental Health

A minor's health information regulated by Health Insurance Portability and Accountability Act (HIPAA) and/or California Confidentiality of Medical Information Act (CMIA) can generally be shared for treatment and diagnosis purposes without a patient authorization. Health information includes mental health treatment as well as general medical information, but does not include substance use disorder treatment information in this scenario (refer to Scenario 10 – Health Provider to Behavioral Health Provider – Substance Use Disorder).
[45 C.F.R. § 164.506; Cal. Civ. Code § 56.10]

Similarly, a health provider may disclose Lanterman-Petris-Short (LPS) regulated health information for diagnosis and treatment to a behavioral health provider who has any responsibility for the minor's healthcare. The information may include any patient information, such as prescribed medications, diagnosis and treatment information, and programs/services utilized if relevant to treatment.
[45 C.F.R. § 164.506; Cal. Welf. & Inst. Code § 5328(a)(1).]

If the behavioral health provider does not have medical or psychological responsibility for the minor's care, LPS-regulated health information can be shared with a valid patient or patient's representative authorization.
[45 C.F.R. § 164.508; Cal. Welf. & Inst. Code §§ 5328(a)(2), 5328.7.]

Citations and Related Guidance

- 45 C.F.R. § 164.506.
- 45 C.F.R. § 164.508.
- Cal. Civ. Code § 56.10.
- Cal. Welf. & Inst. Code § 5328(a)(1) and (2).
- Cal. Welf. & Inst. Code § 5328.7.
- Scenario 10 – Health Provider to Behavioral Health Provider – Substance Use Disorder.
- Appendix 2 – Patient Authorization for Use or Disclosure.

Scenario 9 – Behavioral Health Provider to Health Provider – Mental Health

Description

To provide effective treatment and coordination of care, a health provider needs minor's information from a behavioral health provider, such as mental health information, prescribed medications that may be contraindicated, known allergies, illnesses, or conditions that may negatively interact with psychotropic medications, or other treatments.

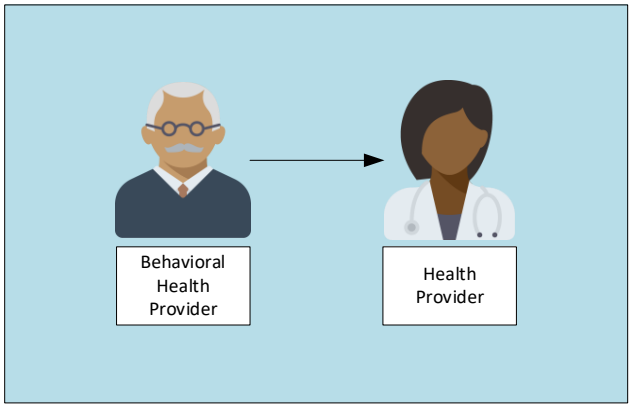
CAUTION! – refer to Scenario 11 – Behavioral Health Provider to Health Provider – Substance Use Disorder for sharing substance use disorder health information.

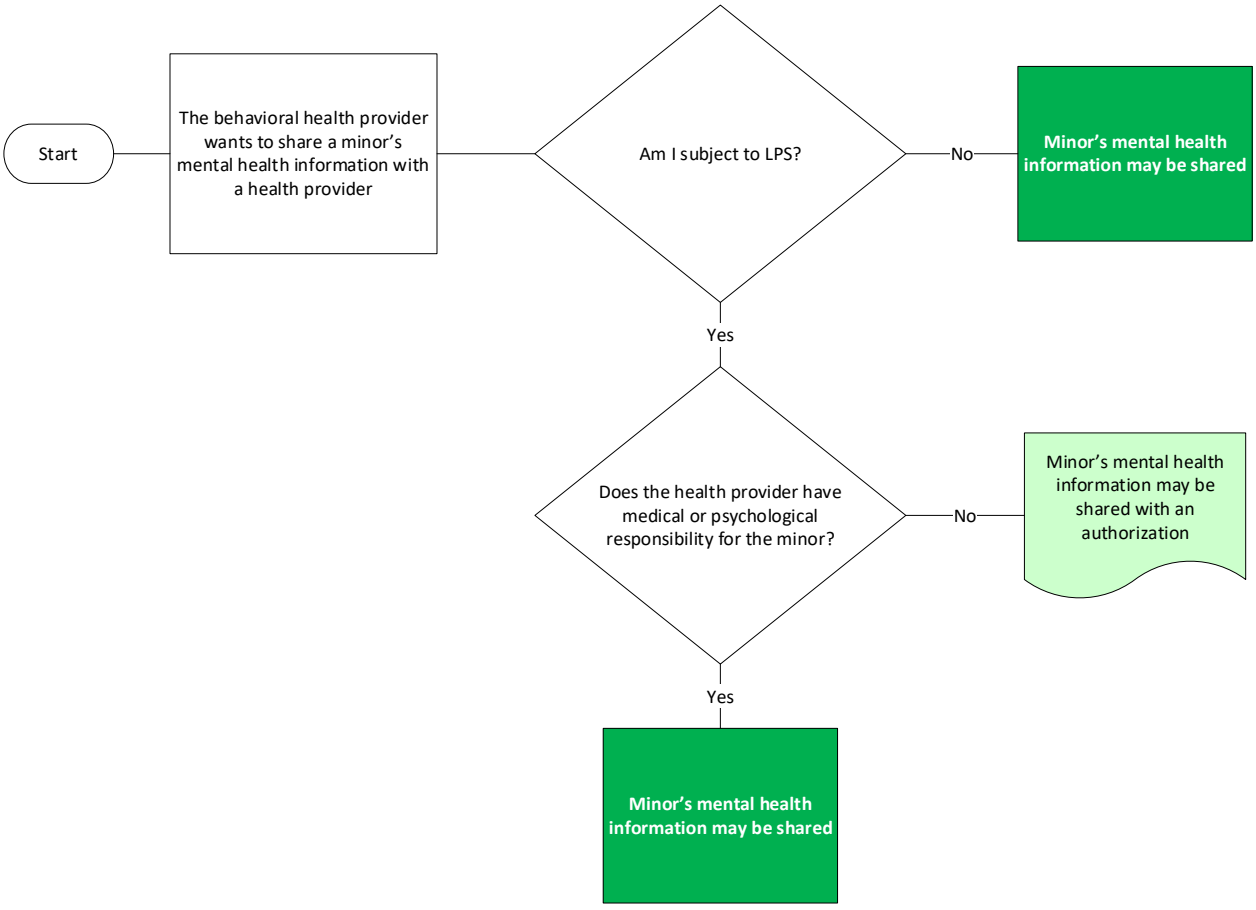
What health information about a minor can a behavioral health provider share with a health provider to provide treatment to the minor?

Important Scenario Guidance Assumptions:

- Organizations participating in this information exchange are not subject to California Consumer Privacy Act
- There is no patient or patient's representative authorization
- There is no medical emergency
- There is no court order

Graphic – Behavioral Health Provider to Health Provider – Mental Health





Scenario Guidance – Behavioral Health Provider to Health Provider – Mental Health

A minor's health information regulated by Health Insurance Portability and Accountability Act (HIPAA) and California Confidentiality of Medical Information Act (CMIA) can generally be shared between health and behavioral health providers for treatment and diagnosis purposes without a patient authorization. Health information includes mental health treatment as well as general medical information, but does not include substance use disorder treatment information in this scenario (refer to Scenario 11 – Behavioral Health Provider to Health Provider – Substance Use Disorder).
[45 C.F.R. § 164.506; Cal. Civ. Code § 56.10.]

In general, a behavioral health provider may disclose Lanterman-Petris-Short (LPS) regulated mental health information without a patient authorization to a health provider who has any responsibility for the minor'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.
[45 C.F.R. § 164.506; Cal. Welf. & Inst. Code § 5328(a)(1).]

If the health provider does not have medical or psychological responsibility for the minor's care, LPS-regulated mental health information can be shared with a valid patient or patient's representative authorization.
[45 C.F.R. § 164.508; Cal. Welf. & Inst. Code §§ 5328(a)(2), 5328.7.]

Citations and Related Guidance

- 45 C.F.R. § 164.506.
- 45 C.F.R. § 164.508.
- Cal. Civ. Code § 56.10.
- Cal. Welf. & Inst. Code § 5328(a)(1) and (2).
- Cal. Welf. & Inst. Code § 5328.7.
- Scenario 11 – Behavioral Health Provider to Health Provider – Substance Use Disorder.
- Appendix 2 – Patient Authorization for Use or Disclosure.

Scenario 10 – Health Provider to Behavioral Health Provider – Substance Use Disorder

Description

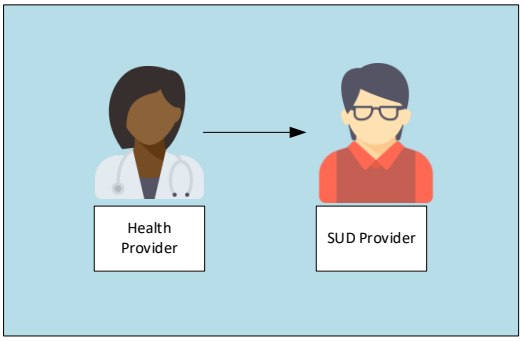
To provide effective treatment and coordination of care, a behavioral health provider needs minor's information from a health provider, such as prescribed medications, known allergies, illnesses, conditions that may negatively interact with psychotropic medications, treatments, and medications that are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

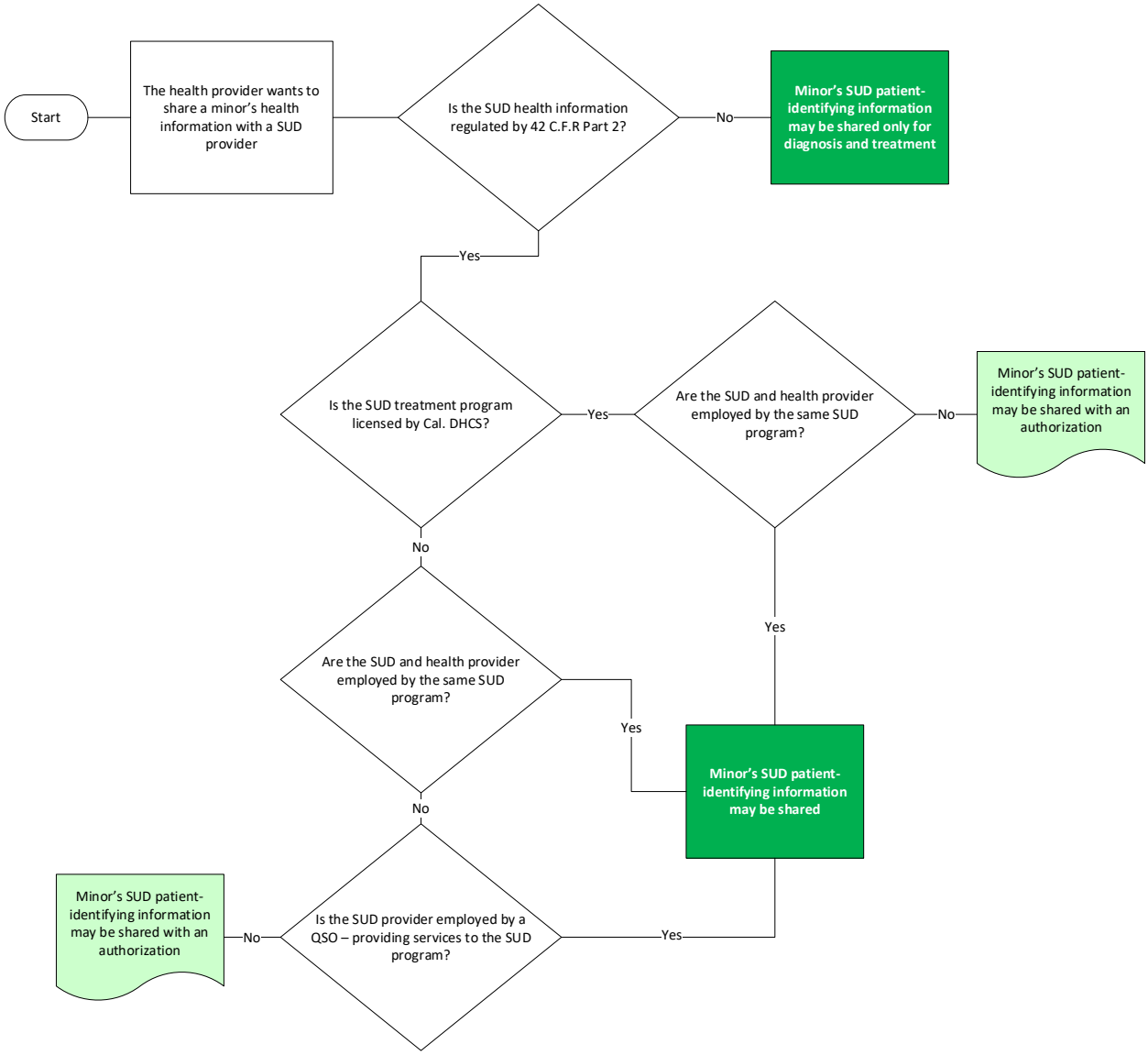
What health information about the minor can a health provider share with a SUD behavioral health provider?

Important Scenario Guidance Assumptions:

- Organizations participating in this information exchange are not subject to California Consumer Privacy Act
- There is no patient or patient's representative authorization
- There is no medical emergency
- There is no court order

Graphic – Health Provider to Behavioral Health Provider – Substance Use Disorder





Scenario Guidance – Health Provider to Behavioral Health Provider – Substance Use Disorder

A minor's health information can generally be shared for treatment and diagnosis purposes without a patient authorization. Health information includes SUD treatment and general medical information. The extent to which sharing of 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.]

A 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 minor's health information is regulated by 42 C.F.R. Part 2 and HSC § 11845.5, the SUD provider may receive the minor's health information when:
    - The SUD provider is an employee and is a treatment/prevention program professional *in the same facility/treatment program* as the health provider, or
    - In July 2020, 42 C.F.R. Part 2 expanded "medical emergency" to include when "a Part 2 program is closed and unable to provide services or obtain the prior written consent of the patient, during a temporary state of emergency declared by a state or federal authority as the result of a natural or major disaster, until such time that the Part 2 program resumes operations." However, behavioral health providers regulated by California Department of Health Care Services (DHCS) must continue to follow HSC § 11845.5, which has not expanded its definition of a medical emergency.
- When the patient health information is regulated by 42 C.F.R. Part 2 and the health provider works for a program/facility that is not licensed by California DHCS (meaning, not regulated by HSC § 11845.5), the SUD provider may receive the minor's health information when the SUD 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).]

For more information about QSO and qualified service organization agreements (QSOA), refer to *SHIG 1 – Sharing Behavioral Health Information in California*[6].

If none of the above conditions are met, then the 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.]

[6] Refer to https://www.cdii.ca.gov/compliance-and-policy/state-health-information-guidance-shig/

Citations and Related Guidance

- 42 C.F.R. § 2.12.
- 42 C.F.R. § 2.51(a).
- 45 C.F.R. § 164.506.
- Cal. Civ. Code § 56.10.
- Cal. Health & Safety Code § 11845.5.
- Appendix 2 – Patient Authorization for Use or Disclosure.

Scenario 11 – Behavioral Health Provider to Health Provider – Substance Use Disorder

Description

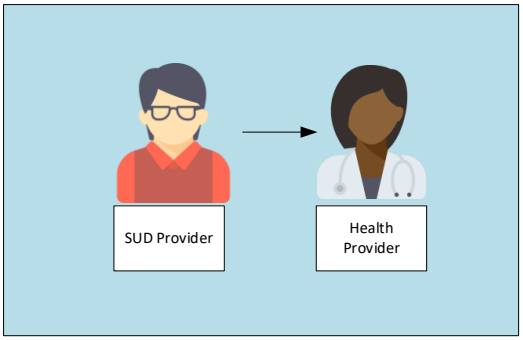
To provide effective treatment and coordination of care, a health provider needs substance use disorder (SUD) patient-identifying information from a behavioral health provider, such as prescribed medications or allergies.

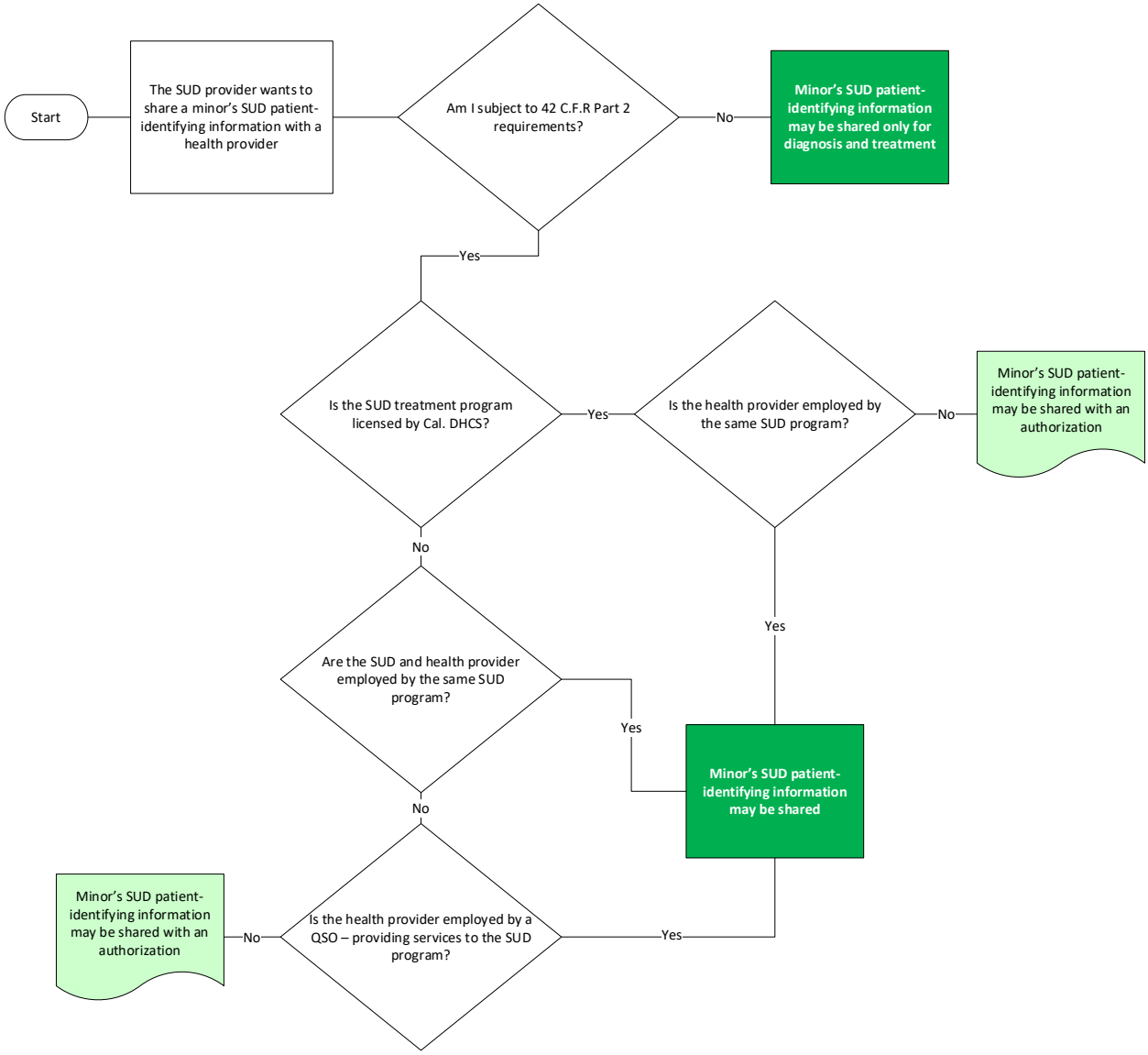
What health information about the minor can a SUD provider share with a health provider?

Important Scenario Guidance Assumptions:

- Organizations participating in this information exchange are not subject to California Consumer Privacy Act
- There is no patient or patient's representative authorization
- There is no medical emergency
- There is no court order

Graphic – Behavioral Health Provider to Health Provider – Substance Use Disorder





Scenario Guidance – Behavioral Health Provider to Health Provider – Substance Use Disorder

A minor's health information regulated by the Health Insurance Portability and Accountability Act (HIPAA) and/or California Confidentiality of Medical Information Act (CMIA) can generally be shared for treatment and diagnosis purposes without a patient authorization. Health information includes SUD treatment and general medical information. However, federal and state law may limit sharing SUD treatment information. SUD patient-identifying information regulated by 42 C.F.R. Part 2 and/or California Health and Safety Code (HSC) § 11845.5 is subject to special protections.
[45 C.F.R. § 164.506; Cal. Civ. Code § 56.10.]

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

- When the minor's health information is regulated by 42 C.F.R. Part 2 and HSC § 11845.5, the health provider may receive the minor's SUD patient-identifying information when:
    - The health provider is an employee and is a treatment/prevention program professional *in the same facility/treatment program* as the SUD provider, or
    - In July 2020, 42 C.F.R. Part 2 expanded "medical emergency" to include when "a Part 2 program is closed and unable to provide services or obtain the prior written consent of the patient, during a temporary state of emergency declared by a state or federal authority as the result of a natural or major disaster, until such time that the Part 2 program resumes operations." However, behavioral health providers regulated by California DHCS must continue to follow HSC § 11845.5, which has not expanded its definition of a medical emergency.
- When the minor's SUD patient-identifying information is regulated by 42 C.F.R. Part 2 and the SUD 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 health provider may receive the minor's health information when the 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), 2.51(a)(2); 45 C.F.R. § 164.506; Cal. Health & Safety Code § 11845.5(c)(1) and (2).]

For more information about QSO and qualified service organization agreements (QSOA), refer to *SHIG 1 – Sharing Behavioral Health Information in California*[7].

[7] Refer to https://www.cdii.ca.gov/compliance-and-policy/state-health-information-guidance-shig/

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. §§ 2.12 and 2.14; Cal. Health & Safety Code § 11845.5(b) and (c)(4).]

Citations and Related Guidance

- 42 C.F.R. § 2.12.
- 42 C.F.R. § 2.14.
- 42 C.F.R. § 2.51.
- 45 C.F.R. § 164.506.
- Cal. Civ. Code § 56.10.
- Cal. Health & Safety Code § 11845.5.
- Appendix 2 – Patient Authorization for Use or Disclosure.

Foster Youth

Introduction

Foster youth health information is shared between health providers and with the foster youth social services case managers (SSCM) in order to provide effective coordination of care to include planning and organizing treatment activities.

In general, health information can be shared for treatment and diagnosis purposes between a foster youth's health providers and with SSCMs. However, behavioral health information, unlike other health information, is specially protected in federal and state law which restrict disclosure of substance use disorder (SUD) patient-identifying behavioral health information.

Health providers include an array of clinicians, facilities, licensed healthcare providers, unlicensed healthcare providers, and licensed organizations and entities. The Health Insurance Portability and Accountability Act (HIPAA) uses the term "Health Care Providers", while the California Confidentiality of Medical Information Act (CMIA) uses the term "Provider of Health Care". The types of health providers under HIPAA and CMIA are included in Appendix 4 – Provider Definitions. For purposes of this Guidance, the use of health provider can include any of the entities found in the appendix.

For purposes of the foster youth scenarios, a SSCM is a social worker or other similar health provider. This includes foster care public health nurse, county social workers, and licensed clinical social workers. Foster youth includes minors and non-minor dependent (non-minor dependents age 18-21) under the care of the child welfare system.

This section provides guidance on the following health information sharing situations:

- Health provider sharing a foster youth's health information with another health provider (Scenario 12).
- Health provider sharing a foster youth's physical health information with a SSCM (Scenario 13).
- Behavioral health provider sharing a foster youth's mental health information with a SSCM (Scenario 14).
- Behavioral health provider sharing a foster youth's SUD patient-identifying information with a SSCM (Scenario 15).

Scenario 12 – Health Provider to Health Provider

Description

A physical health provider needs health information from another physical health provider to coordinate diagnosis and treatment for a minor foster youth or non-minor dependent patient.

For example:

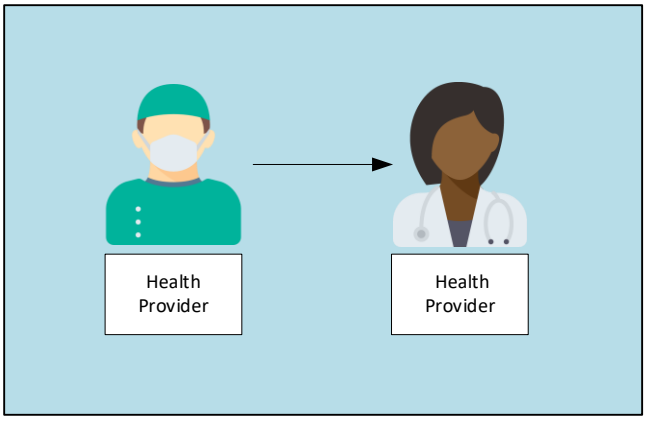
- Primary Care Physician needs test results from a laboratory
- Nurse Case Manager or Medical Social Worker needs health information from a physician for treatment
- Primary Care Physician wants to know what treatment their patient has received from a specialist

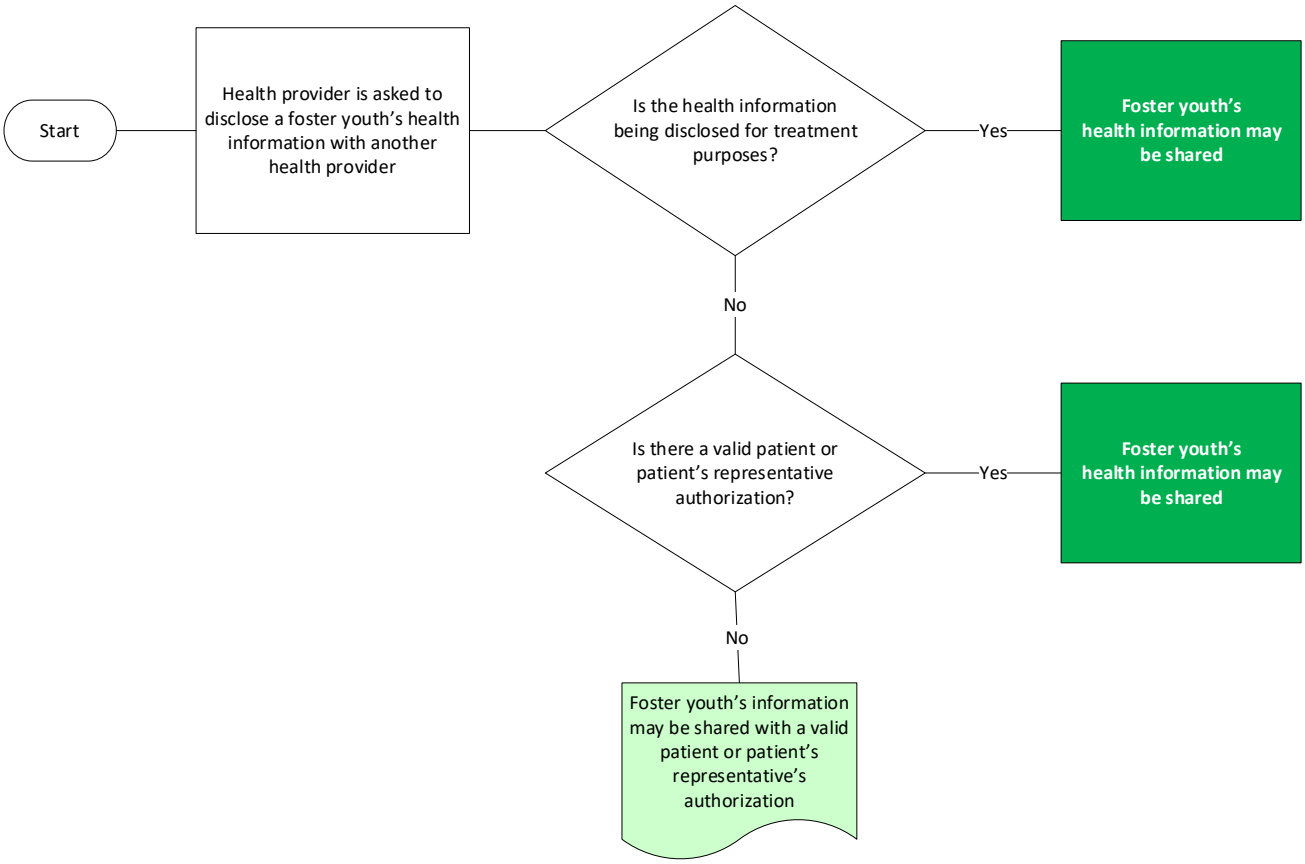
What patient health information can a physical health provider share with another physical health provider?

Important Scenario Guidance Assumptions:

- Patient is a foster youth minor or a non-minor dependent
- There is no patient or patient's representative authorization
- There is no medical emergency
- There is no court order
- Organizations participating in this information exchange are not subject to California Consumer Privacy Act

Graphic – Health Provider to Health Provider





Scenario Guidance – Health Provider to Health Provider

The disclosure of foster youth and non-minor dependent health information for treatment purposes is regulated by the Health Insurance Portability and Accountability Act (HIPAA) for covered entities and the Confidentiality of Medical Information Act (CMIA).

Health providers may disclose health information for the treatment of a foster youth minor or non-minor dependent to another health provider without a patient authorization. For example, a dentist may need to share patient health information with the patient's pediatrician or primary care provider.
[45 C.F.R. § 164.506; Cal. Civ. Code § 56.10(c)(1).]

Disclosures of health information not covered in this scenario, or the other scenarios in Foster Youth, may require a valid patient authorization.
[45 C.F.R. § 164.508.]

Citations and Related Guidance

- 45 C.F.R. § 164.506.
- 45 C.F.R. § 164.508.
- Cal. Civ. Code § 56.10(c)(1).
- Appendix 2 – Patient Authorization for Use or Disclosure.

Scenario 13 – Health Provider to Social Services Case Manager – Physical Health

Description

A physical health provider needs to share health information with a social services case manager (SSCM) to coordinate treatment for a minor foster youth or non-minor dependent patient.

For example:

- A physical health provider may share information on injuries that occurred, services and supports needed for a foster youth living with developmental disabilities, or health information for a foster youth who has an ongoing illness requiring in-home medical equipment
- A SSCM may need to request health information related to any physical trauma or illness resulting from frequently changing situations, transitions or family relationships

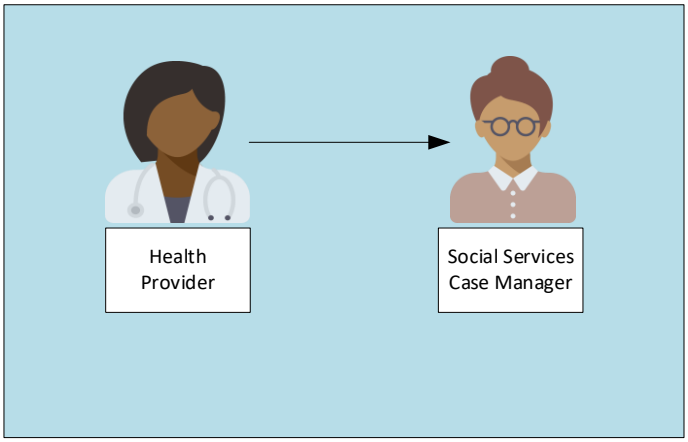
The health information that may be disclosed by a health provider varies depending on whether the health information is regulated by the Lanterman–Petris–Short Act (LPS), 42 C.F.R. Part 2, the Health Insurance Portability and Accountability Act (HIPAA), California Health and Safety Code Section 11845.5,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

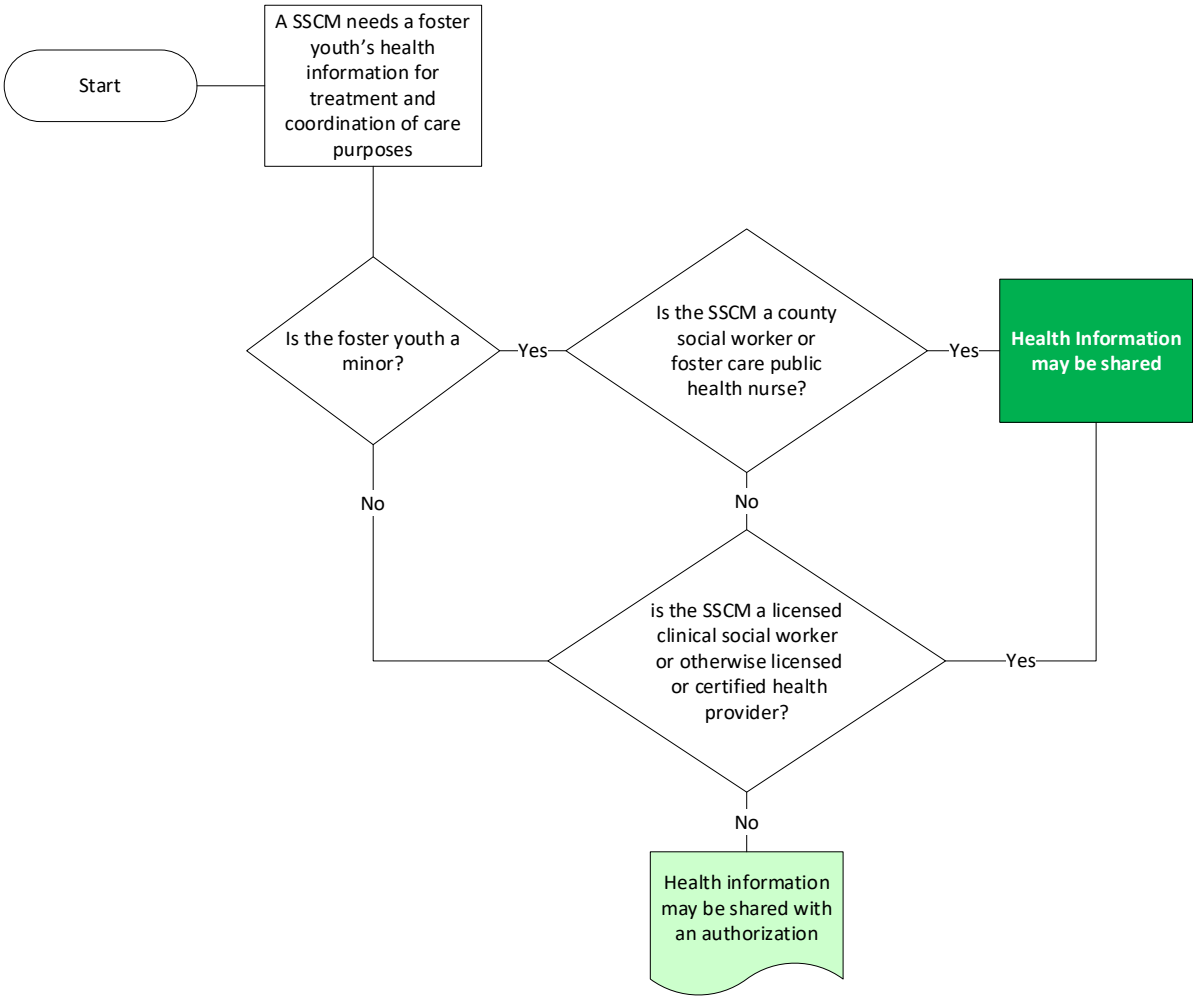
What patient health information can a physical health provider share with a social services case manager?

Important Scenario Guidance Assumptions:

- Patient is a foster youth minor or a non-minor dependent
- There is no patient or patient's representative authorization
- There is no medical emergency
- Organizations participating in this information exchange are not subject to California Consumer Privacy Act

Graphic – Health Provider to Social Services Case Manager – Physical Health





Scenario Guidance – Health Provider to Social Services Case Manager – Physical Health

While federal law treats the health information of minor foster youth the same as adult non-minor dependents, California law does not. Because multiple personnel need to coordinate healthcare for minor foster youth, California law permits access to minor foster youth health information more broadly than for non-minor dependent.

- For a minor foster youth, a SSCM may receive health information for treatment.
- A SSCM includes county social workers, foster care public health nurses, or licensed clinical social workers. Health information received by the SSCM may only be further disclosed for the purpose of treatment of the minor foster youth.

[45 C.F.R. §§ 164.506, 164.512(f)(1)(i) and (ii)(A); Cal. Civ. Code §§ 56.10(c)(1), 56.103; Cal. Welf. & Inst. Code § 5328.04.]

For both a minor foster youth and non-minor dependent, a SSCM who is a licensed or certified health provider may receive health information for treatment. If the SSCM is not a licensed or certified health provider, a patient's health information may be shared with a patient or patient's representative authorization.
[45 C.F.R. §§ 164.506, 164.508; Cal. Civ. Code §§ 56.10(c)(1), 56.11.]

Note: Refer to Scenario 14 – Behavioral Health Provider to Social Services Case Manager (SSCM) – Mental Health for LPS and Scenario 15 – Behavioral Health Provider to Social Services Case Manager (SSCM) – Substance Use Disorder (SUD) for 42 C.F.R. Part 2.

Disclosures of health information not covered in this scenario, or the other scenarios in Foster Youth, may require a valid patient authorization.
[45 C.F.R. § 164.508.]

Citations and Related Guidance

- 45 C.F.R. § 164.506.
- 45 C.F.R. § 164.508.
- 45 C.F.R §§ 164.512(f)(1)(i) and (ii)(A).
- Cal. Civ. Code § 56.10(c)(1).
- Cal. Civ. Code § 56.11.
- Cal. Civ. Code §§ 56.103.
- Cal. Welf & Inst. Code § 5328.04.
- Scenario 14 – Behavioral Health Provider to Social Services Case Manager (SSCM) – Mental Health.
- Scenario 15 – Behavioral Health Provider to Social Services Case Manager (SSCM) – Substance Use Disorder (SUD).
- Appendix 2 – Patient Authorization for Use or Disclosure.

Scenario 14 – Behavioral Health Provider to Social Services Case Manager – Mental Health

Description

A behavioral health provider needs to share patient mental health information with a social services case manager (SSCM) to coordinate treatment for a minor foster youth or non-minor dependent patient.

For example:

- Health provider may share information on a recommended treatment program, or mental health information for a foster youth who is not adapting to their placement
- SSCM may need to request information related to any emotional changes such as severe anxiety, depression, withdrawal, or aggressive behavior resulting from frequently changing situations, transitions or broken family relationships

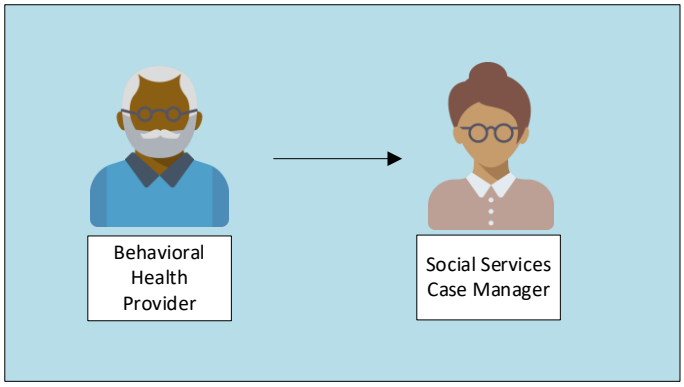
The health information that may be disclosed by a health provider varies depending on whether the health information is regulated by the Lanterman–Petris–Short Act (LPS), 42 C.F.R. Part 2, the Health Insurance Portability and Accountability Act (HIPAA), Health and Safety Code § 11845.5, and/or the Confidentiality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

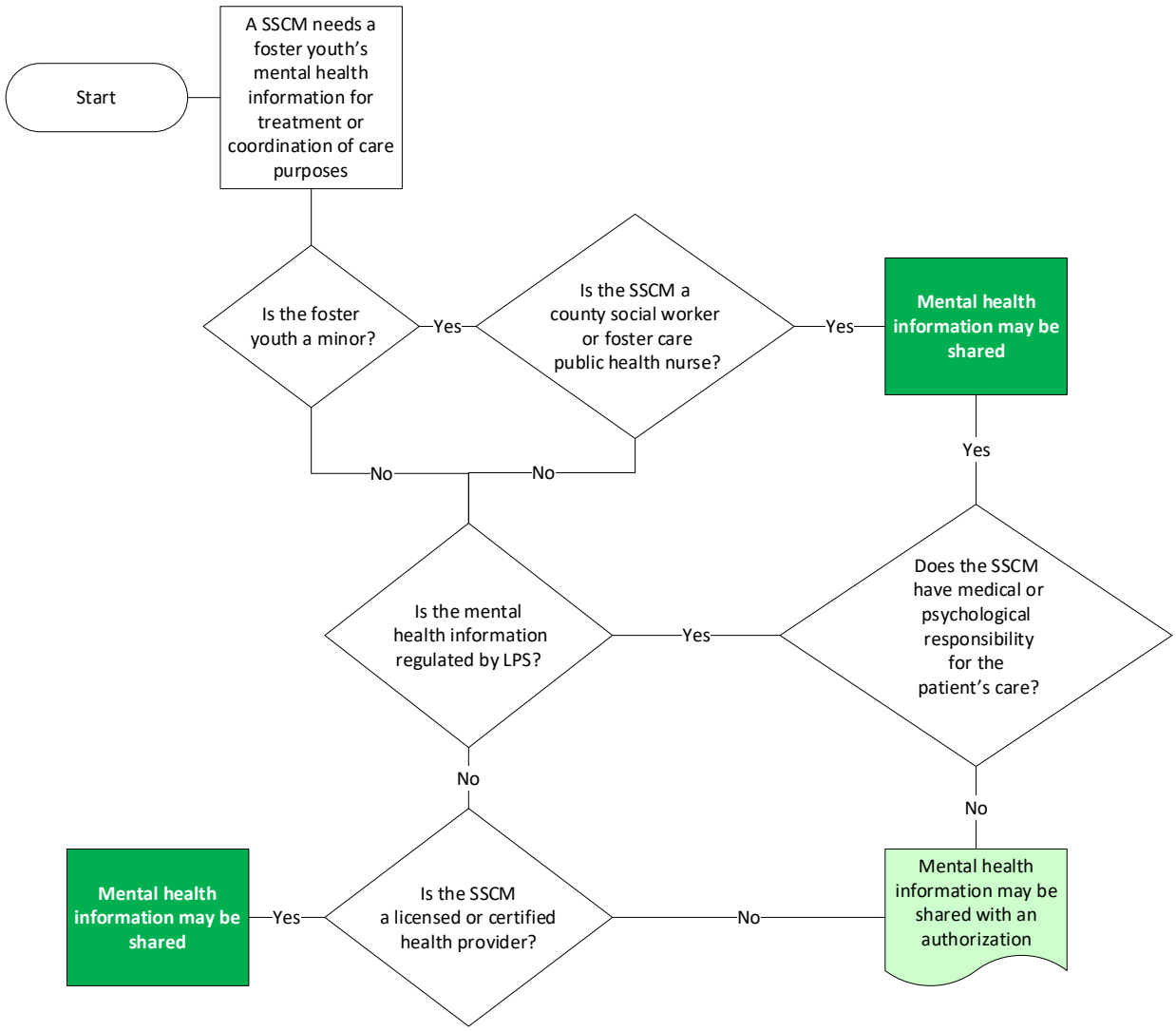
What patient mental health information can a health provider share with a social services case manager?

Important Scenario Guidance Assumptions:

- Patient is a foster youth minor or a non-minor dependent
- There is no patient or patient's representative authorization
- There is no medical emergency
- Organizations participating in this information exchange are not subject to California Consumer Privacy Act

Graphic – Behavioral Health Provider to Social Services Case Manager – Mental Health





Scenario Guidance – Behavioral Health Provider to Social Services Case Manager – Mental Health

California law addresses minor foster youth information the same whether the information is covered by CMIA or LPS. For a minor foster youth, a health provider may disclose the foster youth patient's mental health information to a SSCM if any of the following criteria are met:

- The SCCM may receive mental health information when:
  - The SSCM is a county social worker, or foster care public health nurse.
    [45 C.F.R. § 164.506, 164.512(f)(1)(i) and (ii)(A); Cal. Civ. Code § 56.103; Cal. Welf. & Inst. Code § 5328.04.]
  - The SSCM receiving the information needs the mental health information for the purpose of coordinating healthcare services and treatment, mental health services, or services for developmental disabilities, for the foster youth.
    [45 C.F.R. § 164.506; Cal. Civ. Code § 56.103; Cal. Welf. & Inst. Code § 5328.04.]

CAUTION! When LPS applies, CMIA does not.
[Cal. Civ. Code § 56.30(a).]

The minor foster youth's health information received by the SSCM may only be further disclosed for the purpose of coordinating mental health services and treatment of the foster youth.
[Cal. Civ. Code § 56.103(e); Cal. Welf. & Inst. Code § 5328.04(b).]

For either a minor foster youth or a non-minor dependent, a health provider may disclose the foster youth's mental health information to a SSCM if any of the following criteria are met:

- 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. Civ. Code §56.103; Cal. Welf. & Inst. Code § 5328(a)(1).]
  - The SSCM receiving the information and mental health provider disclosing the information are qualified professional persons with responsibility for the patient's treatment outside of the treatment facility.
    [45 C.F.R. § 164.506; Cal. Welf. & Inst. Code § 5328(a)(1).]

CAUTION! When LPS applies, CMIA does not.
[Cal. Civ. Code § 56.30(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 patient's healthcare access needs, or other non-medical social services).
[45 C.F.R. § 164.508; Cal. Civ. Code § 56.11; Cal. Welf. & Inst. Code § 5328.7.]

CAUTION! The mental health provider cannot disclose mental health information by relying on a parent or guardian signed authorization when they know that the foster youth has been removed from the custody of his or her parent. The parent signed authorization to release mental health records of the minor foster youth patient is no longer considered valid unless the juvenile court finds it would not be detrimental to the minor foster youth and has issued an order which validates the parent's authorization. This protects the minor's wellbeing. A minor with the right and/or capacity to consent to treatment cannot remove this protection by signing an authorization to disclose information to their parents. In addition, even if the court has issued an order validating a parent's authorization, if a minor has the right to consent to treatment, a health provider must still obtain a valid authorization from the minor.
[Cal. Civ. Code § 56.106; Cal. Health & Safety Code § 123116; Cal. Welf. & Inst. Code § 5328.03(a).]

Disclosures of health information not covered in this scenario, or the other scenarios in Foster Youth, may require a valid patient authorization.
[45 C.F.R. § 164.508.]

Citations and Related Guidance

- 45 C.F.R. § 164.506.
- 45 C.F.R. § 164.508.
- 45 C.F.R. §§ 164.512(f)(1)(i) and (ii)(A).
- Cal. Civ. Code § 56.11.
- Cal. Civ. Code § 56.30(a).
- Cal. Civ. Code § 56.103(e).
- Cal. Civ. Code § 56.106.
- Cal. Health & Safety Code § 123116.
- Cal. Welf. & Inst. Code § 5328(a)(1).
- Cal. Welf. & Inst. Code § 5328.03(a).
- Cal. Welf. & Inst. Code § 5328.04.
- Cal. Welf. & Inst. Code § 5328.7.
- Appendix 2 – Patient Authorization for Use or Disclosure.

Scenario 15 – Behavioral Health Provider to Social Services Case Manager – Substance Use Disorder (SUD)

Description

A behavioral health provider needs to share minor foster youth or non-minor dependent patient SUD information with a social services case manager (SSCM) for treatment purposes. Or, a behavioral health provider may want to share health information on prescribed medications and their effectiveness, or planned treatment programs.

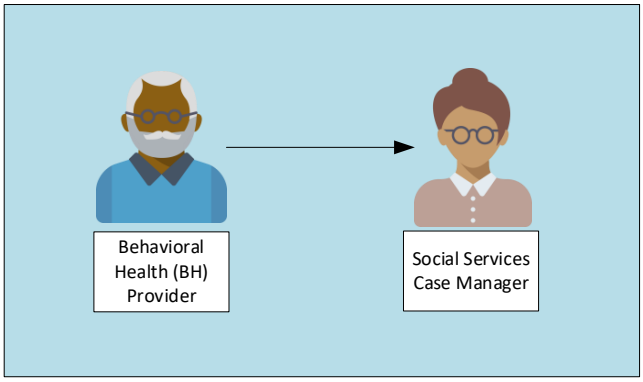
The health information that may be disclosed by a health provider varies depending on whether the health information is regulated by the Lanterman–Petris–Short Act (LPS), 42 C.F.R. Part 2, the Health Insurance Portability and Accountability Act (HIPAA), California Health and Safety Code Section 11845.5, and/or the Confidentiality of Medical Information Act (CMIA). This scenario covers health information regulated by 42 C.F.R. Part 12, HIPAA, CMIA, and California Health and Safety Code Section 11845.5.

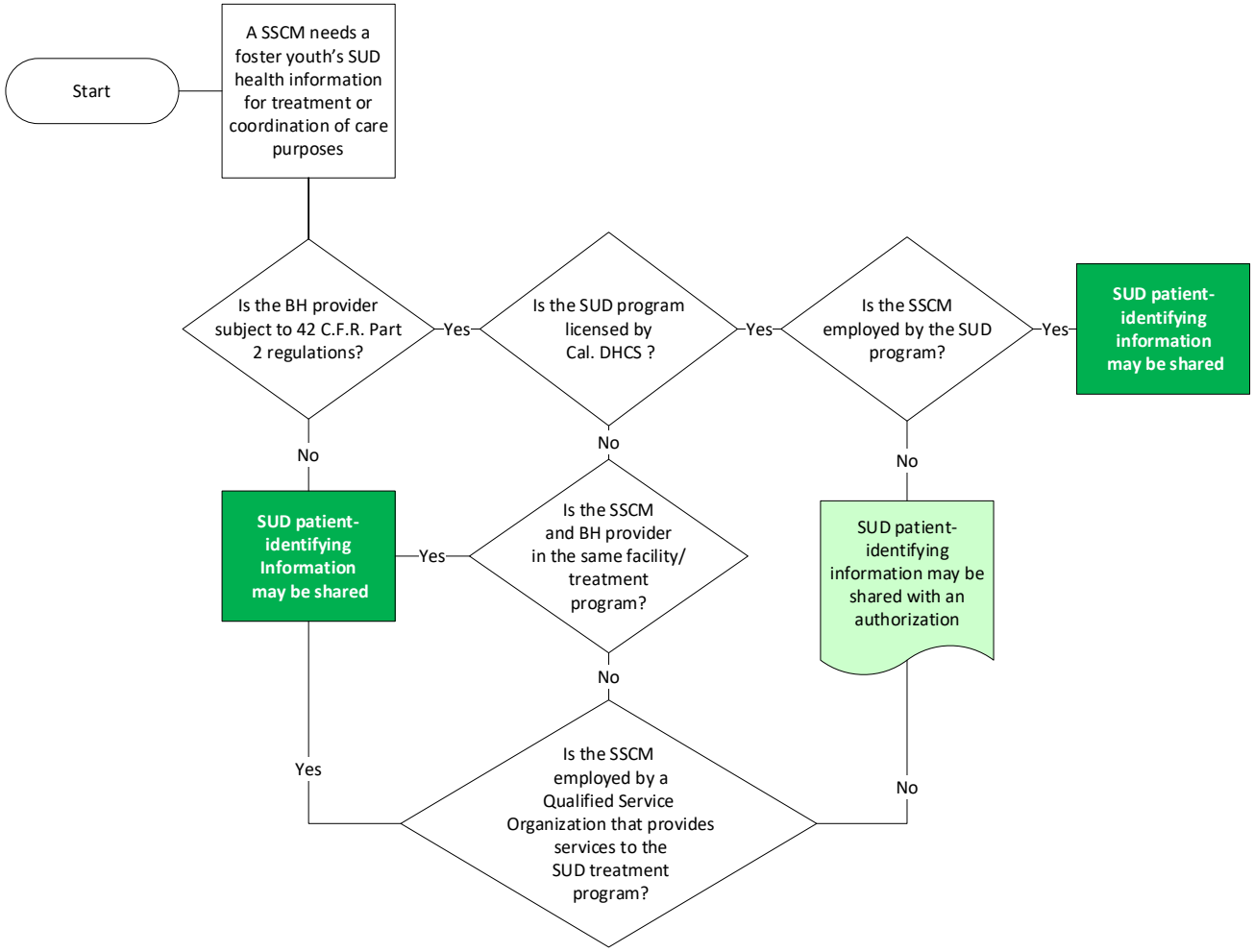
What patient SUD health information can a behavioral health provider share with a social services case manager?

Important Scenario Guidance Assumptions:

- Patient is a foster youth minor or a non-minor dependent
- There is no patient or patient's representative authorization
- There is no medical emergency
- Organizations participating in this information exchange are not subject to California Consumer Privacy Act

Graphic – Behavioral Health Provider to Social Services Case Manager – SUD





Scenario Guidance – Behavioral Health Provider to Social Services Case Manager – SUD

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 a minor foster youth's or non-minor dependent's SUD patient-identifying information to a SSCM without a patient authorization if any of the following criteria are met:

- Part 2 Regulated Facility/Program licensed by DHCS: The SSCM is employed by the program/facility to provide diagnosis, treatment, or referral for treatment for the program's patients. 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. Civ. Code § 56.30(i); Cal. Health & Safety Code § 11845.5(c)(1).]

  CAUTION! If the California Health and Safety Code Section 11845.5 applies, then CMIA does not.

- Part 2 Regulated Facility/Program not licensed by DHCS: The SSCM is employed by a qualified service organization (QSO) that provides service to the SUD treatment program. The QSO must have an appropriate written qualified service organization Agreement (QSOA) 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), 2.32.]

  A QSO may not re-disclose SUD patient-identifying information without an authorization.

- Facility/Program not licensed by DHCS and not regulated by Part 2: The SUD treatment provider works for a program/facility that is not regulated by Part 2 or licensed by DHCS. The SUD provider may disclose SUD information to healthcare professionals or facilities for purposes of diagnosis or treatment of the patient.
  [45 C.F.R. § 164.506; Cal. Civ. Code § 56.103(a).]

If the above conditions are not 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 Code § 11845.5.]

Disclosures of health information not covered in this scenario, or the other scenarios in Foster Youth, may require a valid patient authorization.
[45 C.F.R. § 164.508.]

Citations and Related Guidance

- 42 C.F.R. § 2.11.
- 42 C.F.R. §§ 2.12(c)(3) and (c)(4).
- 42 C.F.R. § 2.32.
- 45 C.F.R. § 164.506.
- 45 C.F.R. § 164.508.
- Cal. Civ. Code § 56.30(i).
- Cal. Civ. Code § 56.103(a).
- Cal. Health & Safety Code § 11845.5.
- Appendix 2 – Patient Authorization for Use or Disclosure.

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:

Center for Data Insights and Innovation (CDII)
1215 O Street, 11th Floor, MS-08
Sacramento, CA 95814
SHIGinformation@chhs.ca.gov

Appendix 1 – SHIG Participants

SHIG Stakeholder Sessions – Participants

The following organizations participated in the 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:

- California Department of Developmental Services (DDS)
- California Department of Health Care Services (DHCS) – Ombudsman Foster Care Office
- California Department of Public Health (CDPH)
- California Department of Rehabilitation (DOR)
- California Department of Social Services (CDSS) – Permanency Policy Bureau
- California Hospital Association
- California Office of Systems Integration
- Child Advocate National Center for Youth Law
- Child Advocates (CASA) of Placer County
- County of Fresno – Department of Social Services
- County of Orange – Health Care Agency
- County of Santa Clara – Behavioral Health
- County of Santa Clara – Department of Child and Family Services
- County of Santa Clara – Office of the County Counsel
- County of Santa Clara – Juvenile Probation
- County of Santa Clara – Probation
- County of Santa Cruz – Child Health and Disability Prevention
- County of Ventura – Child Health and Disability Program
- County of Ventura – Children and Family Services
- County Welfare Directors Association of California
- Eastern Los Angeles Regional Center
- Electronic Frontier Foundation
- HP Pathways
- Manatt
- National Center for Youth Law
- One Community Health
- Sacramento LBGT Community Center
- Sutter Health

SHIG Advisory Committee Members

Advisory Committee members reviewed State Health Information Guidance (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
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Molly Enderby	Privacy by Design Officer	Sutter Health
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Tricia Gonzalez	Child Welfare Services Branch	County of Fresno – Department of Social Services
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Sandhya Hermon	Deputy Director, Social Services Agency	County of Santa Clara – Department of Child and Family Services
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Loc Nguyen	CCR/ICWA Consultant	County Welfare Directors Association of California
Lois Richardson	Vice President	California Hospital Association

Name	Title	Organization Name
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Alicia Sandoval	Service Manager	California Office of Systems Integration
Judy Thompson	Public Health Nurse	County of Santa Cruz – Child Health and Disability Prevention
Lee Tien	Senior Staff Attorney	Electronic Frontier Foundation

SHIG Development Contributors

SHIG Volume 5.1 – Publication in 2023

Under the direction of the Center for Data Insights and Innovation (CDII) the following individuals contributed significantly to the latest edition of the SHIG publication.

Name	Title	Organization Name
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Betsy Figueiro-Steinbrueck	Content Reviewer	Business Advantage Consulting/Speridian
Rochelle Babb	Content Editor	Business Advantage Consulting/Speridian

SHIG – Original Publication in 2021

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

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Virginia Franco Varela	Project Manager
Courtney Hansen	Attorney
Betsy Figueiro-Steinbrueck	Content Developer
Rochelle Babb	Content Developer
Carolyn Borden	Content Developer

Appendix 2 – Patient Authorization for Use and Disclosure

Patient Authorization Summary

A minor or foster youth that can consent may provide permission for a provider or organization to share their health information, for a wide range of purposes, including coordination of care or information to their parent/guardian or caregiver. When the minor or foster youth cannot consent, the parent/guardian or caregiver must give their permission for the minor's or foster youth's health information to be shared. Health providers are encouraged to discuss with minor or foster youth, and/or parent/guardian or caregiver why some forms of sharing might be in the patient's best interests. Informed disclosure decisions may be beneficial to the therapeutic relationship.

As defined by health information privacy laws, a provider generally has responsibility to act on a minor or foster youth patient's (or parent/guardian or caregiver) decision to authorize or not authorize disclosure of their health information. In some situations, regarding substance use disorder (SUD) or mental health information, 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 Act (LPS), California Health and Safety Code § 11845.5, Confidentiality of Medical Information Act (CMIA), and 42 C.F.R. Part 2 (SUD) 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 the patient's representative

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 mental 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, or spouse, or beneficiary/personal representative of a deceased person
- Specific uses and limitations on the types of health 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 health information
- Specific uses and limitations on the use of the health 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 Cal. Health & Safety Code Regulated Authorization Form Requirements

When a patient or patient's representative authorization for a disclosure of substance use disorder (SUD) patient-identifying information is required for a 42 C.F.R. Part 2 regulated entity licensed by the California Department of Health Care 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
- Name of the person or entity that is receiving the information
- Purpose of the disclosure
- How much and what kind of information will be released, including an explicit description of the SUD 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 the patient's representative

[42 C.F.R. §§ 2.31, 2.33; Cal. Health & Safety Code § 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[8] mental health information is shared for treatment, elopement (meaning departs healthcare 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

[8] Refer to Who Is Subject to LPS.

- Relationship to patient
- Persons and agencies to whom such disclosure was made
- Specific information 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 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 (2) 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.]

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

(1)

"This record which has been disclosed to you is protected by federal confidentiality rules (42 C.F.R. Part 2). The federal rules prohibit you from making any further disclosure of this record unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed in this record or, is otherwise permitted by 42 C.F.R. 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 C.F.R. Part 2 prohibits unauthorized disclosure of these records."

Appendix 3 – Caregiver's Authorization Affidavit

The Caregiver's Authorization Affidavit is authorized by Part 1.5 (commencing with Section 6550) of Division 11 of the Cal. Family Code. The affidavit form is available on the California Courts Self-Help Center website at this link: https://www.courts.ca.gov/documents/caregiver.pdf.

Completion of items 1 - 4 and the signing of the affidavit is sufficient to authorize enrollment of a minor or foster youth in school and authorize school related medical care. Completion of items 5 - 8 is additionally required to authorize any other medical care.

Appendix 4 – Provider Definitions

State Health Information Guidance (SHIG) uses 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 "healthcare 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…
Any person licensed or certified per Cal. Business and Professions Code, Division 2 (Healing Arts), commencing with section 500	• Chiropractor • Clinical Laboratory • Dentistry • Medical Providers • Licensed Midwifes • Research Psychoanalysts • Speech-Language Pathologists • Hearing Aid Dispensers • Dispensing Audiologists • Registered Dispensing Opticians • Registered Dieticians • Physical Therapy • Perfusionists • Occupational Therapy • Nursing • Nursing Midwifes • 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…
	• Licensed Professional Clinical Counselors
Any person licensed per Osteopathic Initiative Act or the Chiropractic Initiative Act	• Practitioners of chiropractic
Any person certified per Cal. Health & Safety Code, Division 2.5 (Emergency Medical Services) commencing with section 1797	• 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	• Clinic • Primary Care Clinics • Specialty Clinics • Psychology Clinics • Chronic Dialysis Clinic • Surgical Clinic • Rehabilitation Clinic • Alternative Birth Center • Health Dispensary

Appendix 5 – 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 your 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.

Item	***Information***
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.

Item	***Information***
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	• 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.

Item	***Information***
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

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	• Entity liability • Personal liability (potential job loss)

Confidentiality of Medical Information Act (CMIA)

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

Item	***Information***
Citation(s)	Cal. Civ. Code § 56 et seq.
Who is Covered?	Health providers, health plans, and their contractors.
What information is covered?	Medical information[9]
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

[9] 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	• 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.

Item	***Information***
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.

Item	***Information***
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	• Entity liability • Personal liability

Lanterman Developmental Disabilities Services Act – Developmental Disabilities

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

Item	***Information***
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	• Entity liability • Personal liability

California Substance Use Disorder Records - SUD

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

Item	***Information***
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.

Item	***Information***
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.

Item	***Information***
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.

Item	***Information***
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 6 – Who is Subject to…?

Who is Subject to 42 C.F.R. Part 2 – Confidentiality of Substance Use Disorder (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 practitioners 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 Department of Health Care Services (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?

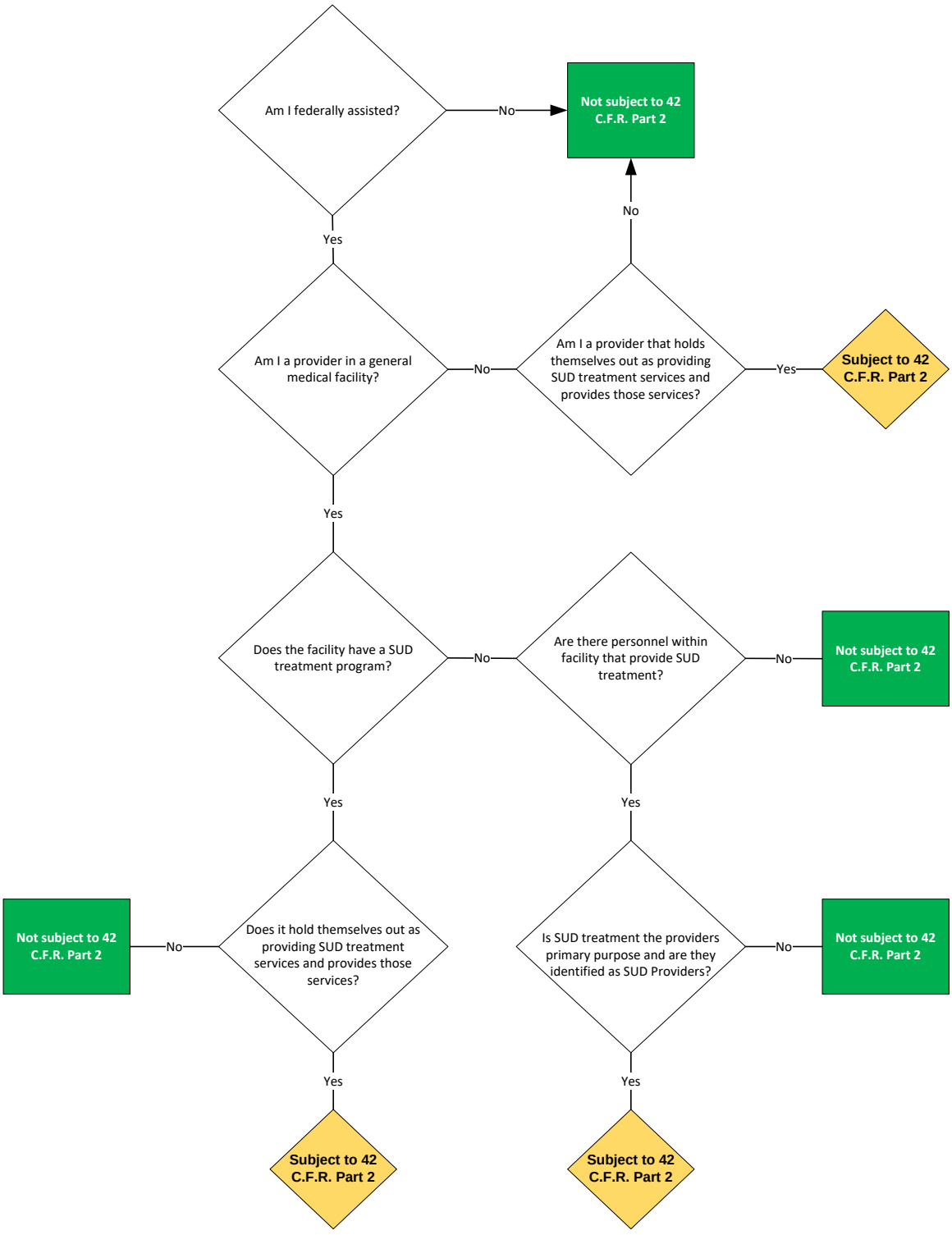
42 C.F.R. Part 2 regulations cover SUD treatment programs that are federally assisted in any of the following ways:

- 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)[10] 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).]

[10] 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 Act (LPS) provides guidelines for some voluntary admissions and all involuntary civil commitments of individuals to mental health facilities in the State of California. LPS 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." 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 LPS privacy protections. *[Cal. Welf. & Inst. Code § 5001.]*

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	

Entity	Subject to LPS	Subject to CMIA
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

Appendix 7 – 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.[11] The online SHIG will be available for as long as the public and stakeholders find it useful. CDII 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 provides clarifications relating to disclosure and exchange of a minor's and foster youth's health information. A number of issues and subjects relating to other health information and/or segments of the minor and foster youth populations 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:

Minors

- Emancipated minors
- Self-sufficient minors
- Unaccompanied undocumented minors
- Active duty with the United States Armed Forces
- Married or previously married
- Minors who can legally consent to specific kinds of medical treatment under a state statute, such as pregnancy, contraceptive care, abortion, communicable diseases, rape victims, outpatient mental health, substance use disorder (SUD), sexually exploited minors, and blood donation
- Patient health information collected outside of treatment
- Additional LGBTQ+ topics

Foster Youth

- Probation information sharing with Social Services
- Resource Family Home/Adopting Family receipt of health information prior to assuming parent/guardian or caregiver role
- Social Services sharing with health providers; health providers are not told that a child is in protective custody and do not receive foster youth history of maltreatment
- Receipt of foster youth health information at the time of placement
- Court-appointed special advocates

[11] https://www.cdii.ca.gov/

- Multi-disciplinary teams
- Child and Family Teams
- Information sharing between counties for cross county placement
- Information sharing between states for cross state placement
- Information sharing for intercountry placement
- Social services agencies information sharing with sovereign tribe child welfare organizations
- Mandatory reporters

References for Minor Laws

CHA Minors and Health Care Law Manual

The *Consent Manual* details what the law requires and how to comply related to patient consent for medical treatment, release of medical information, reporting requirements and more.

CHA Minors and Health Care Law Manual

National Center for Youth Law (NCYL)

The NCYL website provides various resources regarding minor laws in California.

National Center for Youth Law (NCYL)

Appendix 8 – Definitions

Term	Definition
Authorization	A detailed document that gives an entity permission to use and disclose health or otherwise confidential information for purposes specified in the authorization. *[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.]*
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 Act (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 are 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…" • "subcontractor that creates, receives, maintains, or transmits 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).]*
Capacity	The loss or deterioration of intellectual capacity (cognitive impairment) due to a medical condition such as Alzheimer's disease, another form of dementia, or brain injury. These conditions can cause short- or long-term memory loss; language, concentration and attention issues; challenges with visual spatial abilities; impaired judgment or reasoning; or other functional limitations. *[source: Cal. Welf. & Inst. Code § 14522.4(11).]*

Term	Definition
Caregiver	Refers to anyone who provides care for another person. There are different types of caregivers that provide specific care, like family caregivers and respite caregivers. Caregivers can help relieve burdens and support individuals in need. *[source: Created by the SHIG team.]*
Combined Authorization	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 health information and that an authorization that is a condition of treatment, payment, enrollment, or eligibility may not be combined with any other authorization. In 45 C.F.R. § 164.508(b)(3), HIPAA permits covered entities to combine an authorization for the use or disclosure of health information created for purposes of research including treatment of individuals with certain other documents. *[source: Office of the Assistant Secretary for Planning and Evaluation website* https://aspe.hhs.gov*.]*
Compound Authorization	Combining an authorization for the use or disclosure of health information with any other document – this is prohibited by HIPAA. *[source: Office of the Assistant Secretary for Planning and Evaluation website* https://aspe.hhs.gov*.]*
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.*]*
Coordination of Care	The deliberate organization of healthcare and related services between two (2) 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).]*

Term	Definition
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.]*
Developmental Disability	A disability that originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term includes intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature. *[source: Cal. Welf. & Inst. Code §4512(a) (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).]*
Federally Qualified Health Center	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 Services Act. *[source: CDII.]*
Foster Youth	A foster youth who has been placed in the State or county's legal custody because the child's custodial parents/guardians are unable to provide a safe family home due to abuse, neglect, or an inability to care for the child. *[source: Child Welfare Information Gateway: https://www.childwelfare.gov/glossary/glossaryf/.]*

Term	Definition
Health Information	Any name in combination with any other information related to the provision of healthcare that can lead a person to reasonably identify the patient. This definition incorporates and synthesizes State of California and federal definitions, including: • Protected Health Information • Electronic Health Information • Medical Information 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: 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 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: 42 U.S.C. § 300gg-91(a)(2); 45 C.F.R. § 160.103; Cal. Civ. Code § 56.05.]*
Health Provider	An array of clinicians, licensed health organizations, and entities (including healthcare settings) legally defined by HIPAA and CMIA. *[source: 45 C.F.R. §§ 160.102, 160.103; Cal. Civil Code 56.10.]*

Term	Definition
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).]*
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).]*
Minor	An individual under 18 years of age. *[source: Cal. Family Code § 6500.]*

Term	Definition
Non-minor Dependent	A person over the age of 18 and not yet 21, who was previously a dependent child or ward of the juvenile court and who has remained in or returned to foster care, and who, under the Court's jurisdiction, is placed in a supervised independent living placement or setting, and is participating in a transitional independent living case plan as defined in Welfare and Institutions Code section 11400. *[source: https://www.lawinsider.com/dictionary/non-minor dependent/.]*
Parent/Guardian	Either parent if both parents have legal custody, or the parent or person having legal custody, or the guardian, of a minor. *[source: Cal. Family Code § 6903.]*
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.]*
Patient's Representative	A person who: • has the authority under law to make healthcare decisions for another person, including a person granted authority by a juvenile court order for foster youth, or • has the authority to administer the estate of a deceased person (including executor) 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: • 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 • it would not be in the best interest of the patient to deal with the patient as the patient's representative. *[source: 45 C.F.R. § 164.502(g), 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).]*

Term	Definition
Presumptive Transfer	The prompt transfer of the responsibility for providing or arranging for specialty mental health services from the county in which the foster child came to care to the county in which the foster child resides. *[source: Cal. Welf. & Inst. Code § 14717.1(c). (paraphrased)]*
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://cdt.ca.gov.]*
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: a. 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 b. 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).]*
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).]*
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.]*

Term	Definition
Social Services Case Manager (SSCM)	Social workers who specialize in assessing complex patient needs to assist patients and family access to needed medical services (examples include but are not limited to determining need for treatment programs, multi-disciplinary care coordination, medication management). *For more information refer to 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.]*
SUD Treatment Program	Synonymous with "Program" – An individual, entity, or identified unit within a general medical facility providing, or publicly 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).]*
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.]*

Appendix 9 – Acronyms

Acronym	Meaning
42 C.F.R. Part 2	Part 2 of Title 42 of the Code of Federal Regulations also known as Confidentiality of Substance Use Disorder Patient Records
BA	Business Associate
CalHHS	California Health and Human Services
CANS	Child and Adolescent Needs and Strengths
CASA	Court Appointed Special Advocates
CCPA	California Consumer Privacy Act
CCR	Continuum of Care Reform
CDII	Center for Data Insights and Innovation
CDPH	California Department of Public Health
CDSS	California Department of Social Services
C.F.R.	Code of Federal Regulations
CFT	Child and Family Team
CMIA	Confidentiality of Medical Information Act
CMS	Centers for Medicare and Medicaid Services
CWS	Child Welfare System
DDS	California Department of Developmental Services
DEA	United States Drug Enforcement Agency
DHCS	California Department of Health Care Services
DOR	California Department of Rehabilitation
EMS	Emergency Medical Services
EMSA	Emergency Medical Services Authority
EMT	Emergency Medical Technician
FERPA	Family Educational Rights and Privacy Act
FQHC	Federally Qualified Health Centers
HIE	Health Information Exchange
HIO	Health Information Organization
HIPAA	Health Insurance Portability and Accountability Act
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
HMO	Health Maintenance Organization
HSC	Health and Safety Code
ICWA	Indian Child Welfare Act
IPA	California Information Practices Act
IRS	Internal Revenue Service
LGBTQ+	Lesbian, Gay, Bi-sexual, Transgender, Queer+

Acronym	Meaning
LPS	Lanterman–Petris–Short Act
NCYL	National Center for Youth Law
PAHRA	Patient Access to Health Records Act
PHI	Protected Health Information
ROI	Release of Information (form)
SSCM	Social Services Case Manager
SHIG	State Health Information Guidance
SHIPM	Statewide Health Information Policy Manual
SNAP	Supplemental Nutrition Assistance Program
STD	Sexually Transmitted Disease
SUD	Substance Use Disorder
U.S.C.	United States Code
WIC	Welfare and Institutions Code