CALIFORNIA DEPARTMENT OF JUSTICE

CHHS California Health & Human Services Agency

Joint Guidance Letter
California Department of Justice and California Health and Human Services Agency
Re: Information Sharing to Identify Common Clients Between Social Service Agencies

Dear Colleagues:

The California Health and Human Services Agency (CHHS) and the Bureau of Children's Justice within the California Department of Justice (DOJ) jointly write to clarify the conditions under which public social services agencies are permitted to use data matching to share client personally identifiable information (PII) with or without prior authorization from clients.

Background and Summary

Public social services agencies provide invaluable supports and services to California's most vulnerable residents. Frequently, clients are served, or are eligible to be served, by more than one agency within a county. However, manual processes for identifying these shared clients are cumbersome and may lead to delays in service delivery.

Both federal and State law provide strong protections to client's personally identifiable information (PII), clarify a client's right to be informed of providers' policies and practices regarding use and disclosure of PII, and provide clients with the right to authorize additional disclosure beyond that already authorized by law. The law also supports multi-disciplinary coordination of care for clients receiving social services to reach a myriad of potential goals, such as reducing the inefficient use of resources, increasing client satisfaction, and/or improving the effectiveness of client services. Coordination of care can better serve clients and is fiscally responsible. To facilitate the coordination of care, PII should be shared in an appropriate, secure, and timely manner between providers within legal limitations.

To accomplish these care coordination goals, agencies must first be able to identify their shared clients. This can be done using a system-to-system data match in a secure environment or using a secure query on an individual basis, provided the requirements below are satisfied. System-to-system matching may be advantageous for larger data sets. Because a system-to-system data match only flags those clients for whom a positive match is made, it reduces exposure of PII to agency personnel. Using a secure query on an individual basis may be advantageous for data matching at lower volumes, as it will usually require the transmission of smaller data sets between agencies.

As explained in greater detail below, in every circumstance where PII is shared for data matching, four requirements must be met. Specifically, each agency must:

(1) identify the lawful administrative purpose(s) for the match;
(2) implement administrative, physical, and technical safeguards that appropriately protect the confidentiality, integrity, and availability of the client information;
(3) share the minimum amount of PII necessary to effectuate the match; and
(4) comply with all applicable legal requirements for data sharing.

Note that this letter does not address sharing confidential service, care, or treatment information regarding shared clients identified through permitted data matching, or sharing PII for the purpose of aggregating statistical information.[1] This letter is only guidance, and does not itself grant legal authority to share confidential information.

Data Matching to Identify Shared Clients

When permitted by law, as explained further below, public social services agencies are encouraged to share information regarding common clients in order to best coordinate client care, ensure effective service delivery, and determine eligibility for benefits. For many CHHS programs, such sharing of otherwise confidential client information (e.g., juvenile court records or medical records) for these purposes is authorized by law under certain conditions.[2]

Welfare and Institutions Code (WIC) section 10850 subdivision (b) allows the sharing of "lists or other records" of applicants or beneficiaries across public services programs "for purposes directly connected with the administration of public social services." Such sharing needs to be relevant to the agency's administrative functions, and consistent with legal requirements.

WIC section 10850 encompasses many of the programs administered under CHHS, though it specifically excludes Medi-Cal. WIC section 14100.2, governing disclosures of Medi-Cal information, authorizes disclosure of Medi-Cal information only for "purposes directly connected with the administration of the Medi-Cal program." Similarly, child and spousal support services records may not be disclosed "for any purpose not directly connected with the administration of the child and spousal support enforcement program," with limited exceptions.[3]

The federal Health Insurance Portability and Accountability Act (HIPAA) allows use and disclosure of PII among covered entities and their business associates, as defined by HIPAA, for purposes of treatment, payment, and health care operations.[4] As applied to business associates, such disclosures are allowed only as long as there are satisfactory written assurances that the business associate will use the information only for purposes for which it was engaged by the covered entity, will safeguard the information from misuse, and will help the covered entity

[1] For more specific, non-binding, scenario-based guidance from the State of California regarding sharing behavioral health information, the State Health Information Guidance may be helpful: https://www.chhs.ca.gov/ohii/shig/. Public social service agencies may also want to review CHHS' Data Playbook, which is a toolkit to using data, available at https://chhsdata.github.io/dataplaybook/.

[2] For instance, see Welf. & Inst. Code, §§ 827, subds. (a) & (b), 830, subd. (a), 4514, 5328.04, subd. (a), 5328.15, 10850, subds. (a)-(d) & (f), 10850.1 subd. (a), 14100.2 subds. (a)-(c) & (f)-(i), 14186 subd. (b)(9), 16501.3 subd. (b), 18961.7 subds. (a) & (c), 18964, and 18999.8; Health & Saf. Code, § 130279, subd. (a); Civ. Code, §§ 56.10, subd. (c), 56.103, subds. (a) & (e); Fam. Code, § 17212, subd. (c).

[3] Fam. Code, § 17212, subd. (c)(1).

[4] For purposes of HIPAA, these terms are defined by 45 C.F.R. § 164.501.

comply with privacy duties.[5] HIPAA also allows the use or disclosure of protected health information to protect the public interest and for the public benefit under specific parameters.[6]

It is important to note that public health programs' data may be subject to stricter confidentiality requirements that may affect the ability of an agency to share it for matching purposes without client authorization, including requirements imposed by the California constitution, controlling California statutes, or federal law. This type of public health data includes HIV-related data[7], vital records data[8] participant and applicant data from the Special Supplemental Nutrition Program for Women, Infants, and Children[9], as well as data on genetic testing[10], hereditary disorders[11], prenatal rhesus (Rh)[12] and Hepatitis B results[13], California Cancer Registry data[14], Childhood Lead Poisoning Prevention and Occupational Lead data[15], Tuberculosis records[16], prenatal blood test results[17], California Environmental Contaminant Biomonitoring Program information[18], Birth Defects Monitoring Program information[19], Parkinson's Disease Registry information[20], Medical Marijuana Program patient information[21], and Cannabis–California Track-and-Trace data[22].

Moreover, information that would identify a person as having or having had a substance use disorder is also subject to very strict confidentiality requirements. Substance use disorder treatment information covered by federal law,[23] state law,[24] or professional ethics rules, in

[5] 45 C.F.R. § 164.506. For further information about HIPAA and related state law, see: https://www.chhs.ca.gov/ohii/health-laws/
[6] The specific parameters for this disclosure are outlined in 45 C.F.R. § 164.512.
[7] Health & Saf. Code, §§ 120975 and 121025.
[8] Health & Saf. Code, §§ 102230, 102231, & 102430
[9] 7 C.F.R. § 246.26(d).
[10] Health & Saf. Code, § 124975, subd. (j).
[11] Health & Saf. Code, § 124980, subd. (j).
[12] Health & Saf. Code, § 125105.
[13] *Id.*
[14] Health & Saf. Code, § 103885, subd. (g).
[15] Health & Saf. Code, § 124130, subd. (g).
[16] Health & Saf. Code, §§ 100330 & 121362.
[17] Health & Saf. Code, § 125105.
[18] Health & Saf. Code, § 105444.
[19] Health & Saf. Code, § 125002.
[20] Health & Saf. Code, § 103865, subd. (f).
[21] Health & Saf. Code, § 11362.713.
[22] 3 Cal. Code Regs. § 8403.
[23] 42 C.F.R. Part 2.
[24] Health & Saf. Code, § 11845.5

general requires an authorization from the patient, except in very limited circumstances[25].[26] Similarly, notes produced during private mental health counseling sessions are protected from disclosure, except in very limited circumstances.[27]

In most cases, the PII of public social services clients can be exchanged with another public social service agency bilaterally to identify common clients. In public health and other health care programs where the sharing of client information is subject to more stringent restrictions, assuming the other requirements discussed above are met, those programs may still receive PII from other public social services agencies and perform the match on their end. However, the receiving program may be forbidden to disseminate the information further, including sharing the match information with the sender, depending on the specific circumstances.

Matching Must Employ Safeguards

Protection of a client's information is improved when data sharing is done in accordance with written data sharing agreements clearly describing appropriate procedures for data sharing and the respective privacy and security obligations of the parties. Therefore, public social service agencies seeking to match clients across agencies should enter into written data sharing agreements prior to conducting any matches in order to ensure adequate protection of clients' information, and every data sharing agreement should be narrowly and carefully tailored to the specific agencies and contemplated uses.[28] Such agreements should: ensure that the exchange is

[25] These limited circumstances include: (1) communications between qualified professionals employed by the treatment or prevention team in the provision of service(s); (2) communications to other qualified medical persons who are not part of the specific program, to the extent necessary to meet a bona fide medical emergency; (3) communications to qualified personnel for the purpose of conducting scientific research, management audits, financial and compliance audits, or program evaluation; (4) if the recipient of services is a minor, ward, or conservatee, and his/her parent/guardian/conservator designated, in writing, persons to whom his/her identification or information in records may be disclosed; and (5) if authorized by a court after a showing of probable cause.

[26] For purposes of this guidance, we note that youth, in certain circumstances such as medical care related to the prevention or treatment of pregnancy and sexual assault, communicable diseases, mental health, and substance use disorder services, retain the right to provide their own authorization for treatment or access to records. (see Fam. Code, §§ 6920-6930; Health & Saf. Code, § 124260.) The California Department of Social Services has provided information on the sexual and reproductive health care rights of children (https://www.cdss.ca.gov/inforesources/foster-care/healthy-sexual-development-project/resources-for-youth/rights-confidentiality). These provisions can impact whether a minor or a parent or guardian can give consent to information sharing. Agencies should comply with applicable laws and regulations in this regard.

[27] 45 C.F.R. § 164.501, 45 C.F.R. § 164.508(a)(2), and 45 C.F.R. § 164.510(b).

[28] CHHS, for example, utilizes a Data Sharing Framework, which can be found within the CHHS Data Playbook (https://chhsdata.github.io/dataplaybook/resource_library/#datasharing). CHHS's Data Exchange Agreement is bifurcated, with one master agreement and a subordinate specific

made between data systems that meet security standards; follow acceptable use and enforcement policies; include reasonable administrative, technical, and physical safeguards to ensure data confidentiality, integrity, and the ability to prevent unauthorized or inappropriate access, use, or disclosure; ensure the use of the minimum necessary PII to effectuate a data match; and ensure that the data match is being done for a lawful administrative purpose.

Participating agencies should consider the following when creating their data sharing agreements:

(a) the purpose and legal authority for conducting the match and data sharing;
(b) the relevant law that will govern any sharing of information as a consequence of the match;
(c) the records that will be matched, and the minimum PII necessary to effectuate the match;
(d) practices in place to protect the content of the data elements used, including procedures ensuring that shared information is not unnecessarily retained, disclosed, or unencrypted;
(e) procedures for ensuring administrative, technical, and physical security of the matching system and associated information; and
(f) procedures for regularly monitoring compliance with the written agreement.

The matching agreement should be disseminated to those agency staff who participate in the system-to-system matching process. And the agreement should require a periodic review by both agencies to ensure best practices and compliance with relevant law.

Agencies with existing written data sharing agreements should review agreements prior to conducting matches for a new or different purpose, and adjust or enter a new agreement as necessary to address the varying data matching purposes between agencies.

Conclusion

CHHS and DOJ encourage public social services agencies to use secure system-to-system data matching or a secure query on an individual basis to identify shared clients, to the extent permitted, for lawful administrative purposes including coordinating client care, ensuring effective service delivery, and determining eligibility for or enrollment in government benefit programs. This may represent a change in practice in some counties, while it may already be common practice in others. CHHS clients will benefit from the identification of common clients through improved care, greater efficiency, and a more complete understanding of clients' needs at the individual and community levels. Through such efforts, we can deliver more holistic, client-centered services.

use agreement. The master agreement and specific use proposal combine to form a complete, legally-compliant data sharing agreement.

Sincerely,

Xavier Becerra
California Attorney General

Mark Ghaly MD, MPH
Secretary
CA Health and Human Services Agency