DATA SHARING AUTHORIZATION GUIDANCE: MEDI-CAL HOUSING SUPPORT SERVICES TOOLKIT

Draft for Public Comment: Updated November 21, 2024

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INTRODUCTION TO MEDI-CAL HOUSING SUPPORT SERVICES TOOLKIT

Overview

This Toolkit is designed to guide Medi-Cal Partners[1] through data sharing scenarios they may encounter when accessing or sharing member data with other Medi-Cal Partners or with non-Medi-Cal Partners for the purposes of CalAIM Housing Support Services, including Community Supports.[2] It highlights how regulations apply to the distinct type of entities that participate in the delivery of housing supports, the type of Member information that is shared to deliver these services, and the purpose for the sharing of Member[3] information.

Although this Toolkit is intended to assist organizations and providers as they serve Medi-Cal Members, this Toolkit does **NOT** constitute legal advice. The guidance provided in this Toolkit is meant to be illustrative in nature only. The data-sharing and related consent scenarios that individual organizations and providers may encounter will vary and may not perfectly align with the high-level guidance provided here.

In particular, the legal status – under either HIPAA, Part 2, or both – of any individual organization is a fact-specific determination and nothing in this Toolkit is meant to confer

Disclaimer

As the state's Medi-Cal agency, DHCS does not have the authority to interpret or enforce many of the federal privacy laws that apply to the disclosure of information under CalAIM and that are discussed and referenced throughout this Toolkit. As such, DHCS cannot provide legal advice to Medi-Cal Partners regarding when disclosures comply with applicable privacy laws. This document is meant to provide guidance only; Medi-Cal Partners should consult with their individual legal counsels before making any determinations regarding data-sharing and required consent.

[1] In this document, any person or organization that provides Medi-Cal reimbursable health and social services to Members is a Medi-Cal Partner. This includes, but is not limited to, Medi-Cal managed care plans (MCPs), Tribal Health Programs, health care providers, community-based social and human services organizations and providers, local health jurisdictions, correctional facility health care providers, and county and other public agencies that provide services and manage care for individuals enrolled in Medi-Cal.

[2] CA Department of Health Care Services, "CalAIM Community Supports Policy Guide," October 2022, available at https://www.dhcs.ca.gov/Documents/MCQMD/DHCS-Community-Supports-Policy-Guide.pdf

[3] The guidance in this document applies to those individuals enrolled in a managed care plan within Medi-Cal, those receiving behavioral health services under Medi-Cal, as well as applicable justice-involved individuals in FFS. For simplicity, in this document, we use the term "Members."

such status. It merely provides broad parameters within which Medi-Cal Partners can think through data flows and associated obligations.

Medi-Cal MCPs offer a number of services to support Members experiencing homelessness, including through Enhanced Care Management and Community Supports. Medi-Cal Community Supports are services offered by Medi-Cal managed care plans (MCPs) to address Medi-Cal Members' health-related social needs, help them live healthier lives, and avoid higher, costlier levels of care. Members may receive a Community Supports service if they meet the eligibility criteria, and if the MCP determines the Community Supports service is a medically appropriate and cost-effective alternative to services covered under the California Medicaid State Plan.

The housing Community Supports services[4] featured in this Toolkit are:

1. **Housing Transition Navigation Services:** Members experiencing homelessness or who are at risk of experiencing homelessness receive help to find, apply for, and secure housing.
2. **Housing Deposits:** Members receive assistance with application fees, housing security deposits, utilities set-up fees/arrears, first and last month's rent, first month of utilities, and first month's coverage of renter's insurance and storage fees. Members can also receive adaptive aids designed to preserve an individual's health and safety in the home, remediation services necessary to ensure their new home is adequate for move-in, and household items and furnishings needed to establish community-based tenancy.
3. **Housing Tenancy and Sustaining Services:** Members receive support to maintain safe and stable tenancy once housing is secured, such as coordination with landlords to address issues, assistance with the annual housing recertification process, and linkage to community resources to prevent eviction.

More information about ECM and the housing Community Supports services can be found on the DHCS ECM and Community Supports landing page.[5]

Toolkit Structure

This Toolkit includes a series of scenarios and accompanying decision-trees to help the user identify if they need Member consent before sharing member information. Each

[4] Note that this toolkit does not include Community Supports or Behavioral Health funded Transitional Rent services. At the time of toolkit publication, the Transitional Rent services in the managed care and behavioral health delivery systems are still pending federal approval. However, the analysis provided here for other housing Community Supports services is applicable to Transitional Rent services as well upon their launch.

[5] CA Department of Health Care Services, "CalAIM Enhanced Care Management (ECM) and Community Supports," accessed April 17, 2024, available at https://www.dhcs.ca.gov/CalAIM/ECM/Pages/Home.aspx

decision-tree is accompanied by a scenario based on a fictional Medi-Cal member that illustrates the relevant factors and decision points that determine whether Member consent is needed, and why. **These scenarios are illustrative in nature and do not constitute legal advice.**

Toolkit Actors and Organizations

Individuals and entities that may need to share data to support the care or provide services for individuals experiencing homelessness include:

- Individuals experiencing or at risk of homelessness and their families
- Medi-Cal Managed Care Plans (MCPs)
- Medi-Cal Enhanced Care Management (ECM) health care providers
- Medi-Cal Community Supports contracted housing provider organizations
- Homeless services providers not contracted as community supports providers, e.g., homeless shelters, housing authorities, public housing buildings, homeless services organizations
- Continuums of Care, Coordinated Entry Entities, and Homelessness Management Information Systems
- County Behavioral Health Plans (if member has ongoing or urgent substance use disorder (SUD) or mental health needs)
- County Social Services Departments (involvement in coordination and delivery of homeless services can vary by county)
- Clinical Providers
- Specialty Behavioral Health Services providers, including SUD treatment providers
- California Department of Housing and Community Development (HCD)

Services Covered

This Toolkit addresses data-sharing questions that may arise in the delivery of the following services:

- Referral to housing Community Supports
- ECM care coordination and navigation services
- Communication and coordination between Community Supports providers and other entities, such as Behavioral Health providers, ECM providers, etc.

- Delivery of Community Supports services

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OVERVIEW OF APPLICABLE LAWS AND REGULATIONS

Federal Laws and Regulations

Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA is a federal law that regulates "protected health information" (PHI). PHI is a subset of Personally Identifiable Information (PII) that consists of PII relating to an individual's health that is created or received by a "covered entity."[6] Covered entities include health care providers and payers, such as doctors, hospitals, clinics, behavioral health care providers, ECM health care providers, and Medi-Cal. HIPAA permits disclosure of PHI among covered entities for certain purposes—including treatment, payment, or health care operations (certain administrative, legal, financial, and quality improvement activities, including care coordination and case management)—**without** patient authorization. Disclosures can also be made for other purposes if the patient who is the subject of the PHI (or, in some cases, their parent/guardian) authorizes its disclosure on a signed consent form.

With respect to what care coordination and case management activities entail, the Department of Health and Human Services Office for Civil Rights (OCR) has taken the position, in a 2021 Proposed Rule – "Proposed Modifications to the HIPAA Privacy Rule To Support, and Remove Barriers to, Coordinated Care and Individual Engagement" – that the Privacy Rule currently permits covered entities to disclose PHI without individual authorization to social services agencies, community-based organizations, Home and Community Based (HCBS) Services providers, and other similar third parties that provide health-related services to specific individuals for individual-level care coordination and case management, either as a treatment activity of a covered health care provider or as a health care operations activity of a covered health care provider or health plan.

In light of OCR's statements in the preamble to this proposed rule, in addition to the current text of the HIPAA Privacy Rule, covered entities, including managed care plans, are able to disclose PHI to organizations and service providers involved in an individual's treatment and care without the individual's authorization as long as the disclosure is for the purpose of providing health-related services – including housing support services – for care coordination and case management.

[6] US Department of Health and Human Services, "Covered Entities and Business Associates," June 16, 2017, available at https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html

Notably, HIPAA contains an important requirement governing the amount of PHI that can be disclosed for most purposes other than treatment, known as the "minimum necessary" rule. It holds that disclosures of PHI other than for treatment purposes, including for purposes including health care operations (e.g., care coordination), be limited to the minimum necessary to accomplish the intended purpose.

Key Takeaway:

Health care providers and plans can disclose health information to organizations involved in individuals' care, including housing support organizations, without the individuals' consent, if such disclosures are for purposes of care coordination and case management

***Note**: Not all providers of health care are subject to HIPAA. However, for purposes of the scenarios outlined in this Toolkit, we are assuming that the described health care providers, including Enhanced Care Management health care providers and those who deliver health care through behavioral health entities, are covered entities under HIPAA.*[7] *We are also assuming that county behavioral health agencies are covered entities under HIPAA. County Social Services Departments (SSDs) and other providers of health-related social services, however, are not typically covered entities under HIPAA and instead may be Business Associates. Business Associates are entities that use or store PHI on behalf of covered entities and have entered into a contract with the covered entities (a "Business Associate Agreement" (BAA)) that governs such use.*

42 C.F.R. Part 2: 42 C.F.R. Part 2 (or Part 2) is a set of federal regulations that protects the confidentiality of some types of SUD information. Part 2 does not apply to all SUD information, but only to information that has been obtained by a Part 2 provider, sometimes called a Part 2 program, and that would identify an individual as having or having had an SUD.[6] In order to be deemed a Part 2 provider or program, the provider must: (1) receive federal assistance; and (2) hold themselves out as providing and

[7] Note that not all health care providers are HIPAA covered entities, nor are all housing providers. In order to be a covered entity under HIPAA, a provider must submit HIPAA transactions, such as claims for payment, electronically. Understanding that whether or not a particular housing organization is a covered entity will vary, for purposes of this Toolkit, we are assuming that the health care providers described in each scenario are Medi-Cal-enrolled providers that submit their claims for health care payment to Medi-Cal electronically and are thus covered by HIPAA.

actually provide SUD diagnosis, treatment, or referral for treatment. Many, but not all, SUD providers are "Part 2 providers."

When Part 2 applies, it is often stricter than HIPAA, in part because the regulation does not permit disclosures of information for treatment or care coordination purposes without patient consent. Part 2 also does not permit disclosures of Part 2 information for payment purposes without consent, meaning Part 2 programs need their patients to provide a written consent if they want to submit claims to their patients' health insurers, including Medi-Cal.

Because Medi-Cal Partners provide services to Members with SUDs, the Part 2 regulations apply to some of the information exchanged under CalAIM, and as a result Medi-Cal Partners need to assess whether the information they are exchanging is subject to Part 2.

Under the recently released Part 2 final rule,[7] patients may now consent to current and future uses and disclosures of their SUD records for treatment, care coordination, and payment purposes using a single form (referred to in the rule as a "TPO consent"). Pursuant to this new rule, if an individual signs a TPO consent, a covered entity or business associate may use and disclose their SUD records for treatment, payment, and health care operations as permitted by the HIPAA regulations, until such time as the patient revokes such consent in writing.

Individuals also may now describe an entire category of people who can receive their SUD data (e.g., "housing support organizations," or "my treating providers, health plans, third party payers, and people helping to operate this program"), rather than having to list the name of every potential recipient on the form. Consents may also have an expiration date of "none."[8]

When individuals are signing a TPO consent for future disclosures of their health information, their Part 2 records may also now be re-disclosed by Part 2 record recipients **who are covered entities and business associates** without additional patient consent as long as such redisclosure complies with the HIPAA Privacy Rule.[8] When recipients of Part 2 records are **not** covered entities or business associates (e.g., a

[8] This permitted redisclosure excludes uses and disclosures for civil, criminal, administrative, and legislative proceedings against the patient. 45 C.F.R. 2.33(b)(1).

provider of housing support services), individual authorization for redisclosure of Part 2 information is generally required.[9]

Key Takeaway:

Part 2 now permits an individual:

- To describe an entire category of providers on a Part 2 consent form, such as "my housing support providers."
- Sign a single TPO consent for all future uses and disclosures of Part 2 information that are for treatment, payment, or healthcare operations.

Part 2 data recipients that are not covered entities generally need to obtain additional consent before redisclosing such records; Part 2 data recipients that are covered entities or business associates may redisclose Part 2 data without additional authorization when using or disclosing Part 2 in

Note: The federal statute underlying the Part 2 regulations incorporates the HIPAA Privacy Rule definition of "health care operations," which, as explained above, includes care coordination and case management activities.

As a result, the Part 2 rule updates allowing redisclosure of Part 2 records received by covered entities and their business associates for purposes of treatment, payment, and health care operations "as permitted by the HIPAA regulations" enable health care clinicians and managed care organizations to share these SUD records for purposes of care coordination without additional patient consent.

State Laws and Regulations

Assembly Bill (AB) 133: AB 133 is a law that was passed in July 2021 and changed California state law to promote data exchange and care coordination for people receiving services under CalAIM (see section 3 in the Data Sharing Authorization

[9] When Part 2 information is "disclosed for payment or health care operations activities to a lawful holder that is not a covered entity or business associate, the recipient may further disclose those records as may be necessary for its contractors, subcontractors, or legal representatives to carry out the payment or health care operations specified in the consent on behalf of such lawful holders." (42 C.F.R §2.33(b)(3).) The lawful holder must have in place a contract with the contractor or legal representative that meets certain requirements set forth in §2.33(c).

Guidance, describing AB 133[10]). AB 133 permits Medi-Cal Partners to disclose personal health information (PHI) and personally identifiable information (PII) among one another so long as such disclosure improves care coordination and health outcomes and is consistent with federal law. Specifically, as part of an effort to improve access to care and delivery of comprehensive health care, AB 133 allows data sharing without consent even in situations where other California privacy laws would require consent.

Note that this Toolkit does not analyze the impact of most of the California laws whose consent requirements are pre-empted by AB 133[11], such as:

- Health and Safety Code § 11845.5 (which governs SUD records);
- Health and Safety Code § 121010 (which governs HIV/AIDS information);
- The Confidentiality of Medical Information Act (CMIA), which governs disclosures of medical information and has special protections for abortion-related information.

These analyses are not included because AB 133 applies in each of the Toolkit scenarios. You may wish to consult legal counsel to confirm whether AB 133 applies in your specific situation. If AB 133 does **not** apply, you may need to consider whether the above-mentioned or other California and/or Federal laws require consent to share data.

AB 210: AB 210, which permits multi-disciplinary personnel teams (MDTs) of Participating Agencies to share and exchange information made confidential by State law to facilitate the expedited identification, assessment, and linkage of homeless adults and families to housing and supportive services within the County, became effective in January 2018 and requires Counties to establish a County Protocol and Countywide Policies and Procedures that govern information sharing. Similar to the pre-emption of more restrictive state data-sharing laws allowed by AB 133, AB 210 permits sharing and exchanging of otherwise confidential information within if such sharing and/or exchanging is for the purpose of connecting homeless adults and families to housing and other support services. Importantly, AB 210 does not supersede any federal laws or regulations (e.g., HIPAA and Part 2).

[10] CA Department of Health Care Services, "CalAIM Data Sharing Authorization Guidance," October 2023, available at https://www.dhcs.ca.gov/CalAIM/ECM/Documents/CalAIM-Data-Sharing-Authorization-Guidance.pdf

[11] CA Department of Health Care Services, "CalAIM Data Sharing Authorization Guidance," October 2023, available at https://www.dhcs.ca.gov/CalAIM/ECM/Documents/CalAIM-Data-Sharing-Authorization-Guidance.pdf

The Toolkit scenarios do not include legal analysis of AB 210's application because AB 133 applies more broadly to care coordination services under CalAIM. If a housing organization has signed their county's AB 210 protocol as a Participating Agency, it will not change the consent analysis provided in the Toolkit because:

- AB 210 does not impact the applicability of federal laws and regulations such as HIPAA or Part 2; and
- AB 210 permits data sharing for the purposes of coordination or delivery of homelessness services between MDTs.

Lanterman-Petris-Short Act: The Lanterman-Petris-Short (LPS) Act provides guidelines for handling involuntary civil commitment of individuals to mental health institutions in California and governs use and disclosure of mental health records. LPS expressly permits disclosure of information and records governed by the LPS Act to a business associate or for health care operations purposes, in accordance with HIPAA regulations. Although this is one of the California state laws whose consent provisions are pre-empted by AB 133, this Toolkit does include a scenario in which LPS is implicated, given that individuals receiving housing supports often have co-occurring mental health conditions.

Department of Housing and Urban Development Continuum of Care and Homeless Information Management Systems:

The Continuum of Care (CoC) program is established and overseen by the Department of Housing and Urban Development (HUD)[12] to:

- "Promote community-wide planning and strategic use of resources to address homelessness;
- Improve coordination and integration with mainstream resources and other programs targeted to people experiencing homelessness;
- Improve data collection and performance measurement; and
- Allow each community to tailor its programs to the strengths and challenges in assisting homeless individuals and families within that community."

All 50 states and six United States territories have CoCs. Each CoC encompasses a discrete geographic region that brings together a wide range of representatives from

[12] HUD Exchange, "Continuum of Care (CoC) Program Eligibility Requirements," accessed April 17, 2024, available at https://www.hudexchange.info/programs/coc/coc-program-eligibility-requirements/

public and private entities that include civic groups, educational institutions, faith-based organizations, health and mental health care providers, local government, and non-profit agencies. The aim of a CoC is to assist individuals (including unaccompanied youth) and families experiencing homelessness and provide the services needed to help such individuals move into transitional and permanent housing, with the goal of long-term stability.[13] Organizations within a CoC can receive Department of Housing and Urban Development (HUD) funding to support programs on homelessness prevention, permanent housing, transitional housing, and support services to help individuals enter navigate the re-housing system.[14] California is divided into 44 CoCs.[15]

Each CoC is also responsible for and funded to set up and maintain the **Homeless Management Information System (HMIS)** for its geographic region. HMIS is a local information technology system used by homelessness and housing organizations in the CoC to collect and share client-level data on the provision of housing and services to individuals and families at risk of and experiencing homelessness. This data includes information that is considered protected personal information (PPI), such as:

- Address;
- Phone number;
- Social security number;
- Race/ethnicity;
- Income sources;
- Non-cash benefits;
- Health insurance;
- Self-reported disabilities;
- Self-reported mental or physical health conditions, including HIV/AIDS;
- Self-reported SUD treatment status; or
- Experience of domestic violence.

Governance of HMIS Data

[13] HUD Exchange, "Continuum of Care (CoC) Program," accessed April 17, 2024, available at https://www.hudexchange.info/programs/coc/
[14] HUD, "Continuum of Care (CoC) Program Competition," February 2024, available at https://www.hud.gov/program_offices/comm_planning/coc/competition
[15] Homeless Strategy, "Maps for California Continuums of Care," accessed April 17, 2024, available at https://homelessstrategy.com/maps-for-california-continuums-of-care/

HUD establishes standards regarding the data elements that must be collected for HMIS and the format in which they should be collected.[16] However, local CoCs also have flexibility to collect additional data elements, such as health information, and layer their own processes for data collection on top of the HUD requirements.[17]

HUD requires that **Covered Homeless Organizations (CHO) -** organizations that record, use or process data on homeless clients for an HMIS – collect data only for reasons relevant to the services being provided and follow a set of privacy standards,[18] based on fair information practices, for the collection, disclosure, and use of that information.

CHOs must make data collection transparent by providing participants with a written copy of their **Privacy Notice**, which must explain generally the reasons for collecting individuals' information for HMIS, as well as the ways in which the CHO may use and disclose that information, and to whom. HUD recommends that CoCs develop a uniform **Privacy Notice** for all of their CHOs, but if there is not uniform adoption, every CHO must have its own Privacy Notice that meets the HMIS privacy standards.[19]

HUD provides a model Privacy Notice,[20] but CoCs and CHOs may also develop their own. CHOs must describe to their clients the content of the Notice in plain language and post a public statement explaining why personal information is being collected.[21] CoCs and CHOs are also required to ensure that individuals have access to their information and an avenue to file a complaint.[22]

Federal HUD rules **do not require that CoCs or CHOs obtain individual consent for collection, uses and disclosures of data that are described in the Privacy Notice.**

[16] U.S. Department of Housing and Urban Development. (2004, January 23). 2004 HMIS data and technical standards final notice. HUD Exchange. https://www.hudexchange.info/resource/1318/2004-hmis-data-and-technical-standards-final-notice/
[17] HUD Exchange, "HMIS Data Dictionary," accessed April 17, 2024, available at https://www.hudexchange.info/resource/3824/hmis-data-dictionary/
[18] HUD Exchange, "Protecting Data in an HMIS Environment: Privacy, Security, and Confidentiality (Slides)," accessed April 17, 2024, available at https://files.hudexchange.info/course-content/protecting-data-in-an-hmis-environment-privacy-security-and-confidentiality/Protecting-Data-in-an-HMIS-Environment-Privacy-Security-and-Confidentiality-Slides.pdf
[19] Coordinated Entity Management and Data Guide, *available at*: coordinated-entry-management-and-data-guide.pdf.
[20] HUD " Baseline Model Privacy Notice for Homeless Organizations," *available at*: HMISPrivacyNoticeDevelTemplate.doc.
[21] HUD Requirements for Privacy and Security for HMIS, *available at*: Privacy-and-Security-Toolkit-Introduction.pdf.
[22] Coordinated Entity Management and Data Guide, *available at*: coordinated-entry-management-and-data-guide.pdf.

Housing organizations are only required to obtain consent for uses and disclosures of personal information that are not included in the CoC or CHO Privacy Notice.

However, individual **CoCs may impose their own consent requirements** for collection, uses, and disclosures of individuals' data. Such consent to collect data for HMIS may be oral or written, and consent for all uses and disclosures that are specified in the Privacy Notice and uses and disclosures determined by the CoC to be compatible with those specified in the Notice may also be inferred.[23]

Although some organizations and CoCs in California require written consent by individuals to share data collected and stored in HMIS,[24] importantly, potential program participants cannot be denied homeless or housing services if they refuse to sign an HMIS Release of Information.[25]

Interaction Between HMIS Consent Requirements and HIPAA:

- HIPAA does not apply in circumstances where the HMIS information that a non-covered entity, non-business associate housing organization is collecting and sharing within HMIS consists of self-reported health and personal information. HIPAA only applies to health information held by a covered entity or business associate, and as a result, health data held or shared by an organization that is neither a covered entity or business associate will not constitute PHI under HIPAA. A housing organization that is not subject to HIPAA can therefore disclose information in accordance with HMIS rules.
- A non-covered entity, non-business associate housing organization can receive health information from a HIPAA-covered entity or business associate. Once disclosed to a non-HIPAA-covered entity, health information is no longer considered PHI or subject to HIPAA.
- Any housing organization that is covered under HIPAA, either as a covered entity or through a BAA with a covered entity, is not required to comply with the HUD privacy or security standards if the organization determines that a substantial

[23] Further resources on HMIS data and privacy regulations and implementation can be found in the HUD HMIS Data and Privacy Security Toolkit, available at https://www.hudexchange.info/resource/7250/hmis-data-and-privacy-security-toolkit/

[24] Los Angeles Homeless Services Authority (LAHSA), "Form 1119: Consent to Share Protected Personal Information (English)," accessed April 17, 2024, available at https://www.lahsa.org/documents?id=1119-form-1119-consent-to-share-protected-personal-information-english-.pdf

[25] HUD Exchange, "If a Client Refuses to Sign the HMIS Release of Information," accessed April 17, 2024, available at https://www.hudexchange.info/faqs/1787/if-a-client-refuses-to-sign-the-hmis-release-of-information/

portion of its PPI is PHI under HIPAA,[26] as in such cases HIPAA, rather than HUD rules, will govern.

- If a housing organization that is covered under HIPAA plans to share information in HMIS that is considered PHI (e.g., HIV/AIDS diagnosis, or a referral for a Medi-Cal covered service, such as navigation as a community support) for purposes other than treatment, payment, or health care operations, in most cases the organization will be required to obtain an authorization to disclose PHI.[27]

Key Takeaway:

Personal information, including health information, held by a housing organization that is NOT a provider of health care subject to HIPAA is not PHI and can be shared in accordance with HMIS rules.

Overview of General Process Flows

The purpose of this high-level general process flow is to outline situations in which data sharing can occur under HIPAA and to help Medi-Cal Partners understand whether: 1) they are a HIPAA covered entity; and 2) whether consent is required for the desired exchange of data.

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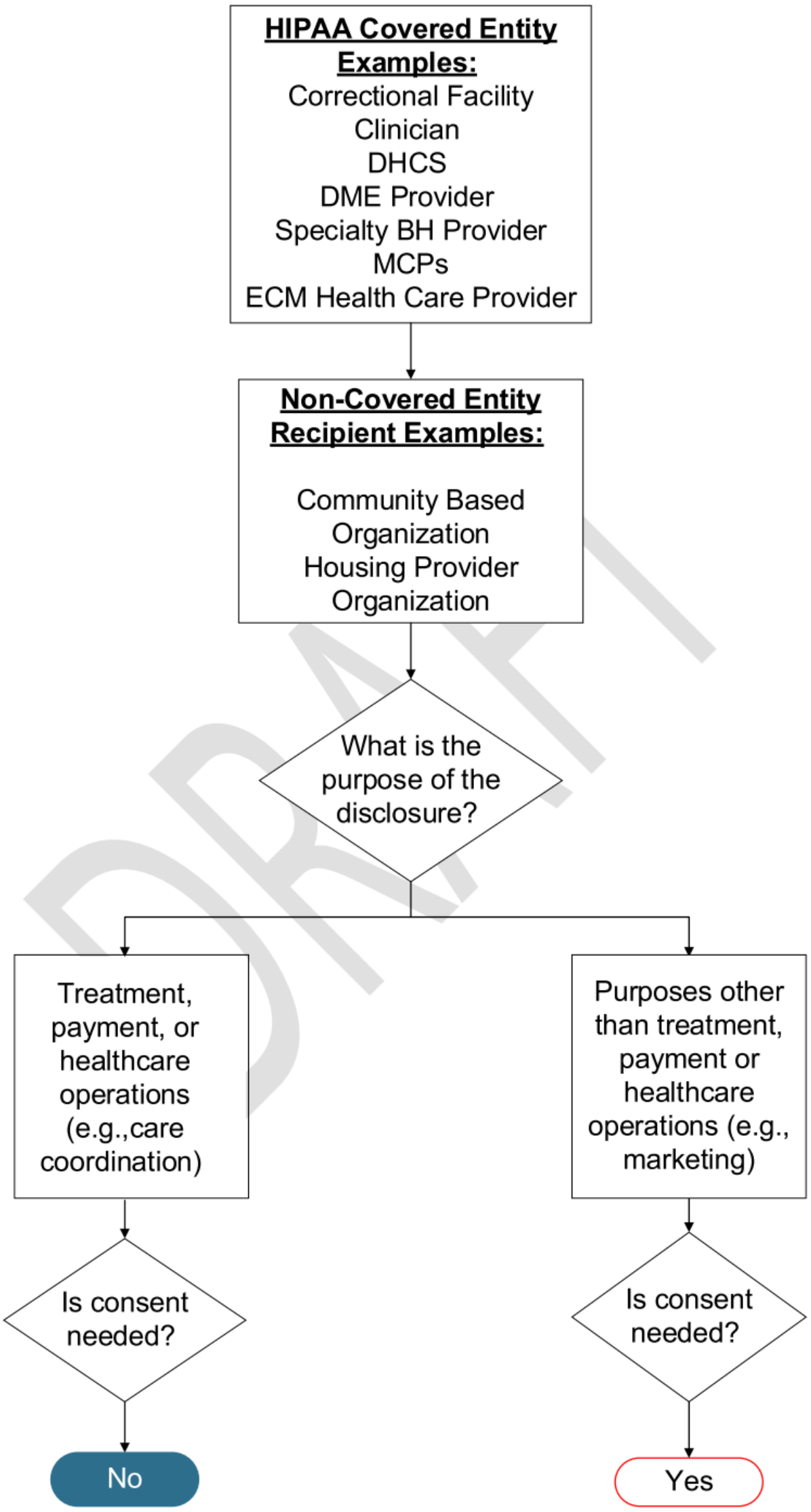
[26] 69 Fed. Reg. 45888 (July 30, 2024), at 45930.
[27] An authorization to disclose PHI must meet the requirements at 45 C.F.R. § 164.508(b).

Example of Data Exchange Between HIPAA Covered Entities

This data-flow provides an example of the exchange of PHI between HIPAA covered entities and non-covered entities, such as housing providers. The flow also provides examples of HIPAA covered entities and non-covered entities that will be showcased throughout the Toolkit scenarios. In the example illustrated below, PHI does **not** include information that is also subject to 42 C.F.R. Part 2.


HIPAA Covered Entity Examples:
Correctional Facility
Clinician
DHCS
DME Provider
Specialty BH Provider
MCPs
ECM Health Care Provider
Non-Covered Entity Recipient Examples:
Community Based Organization
Housing Provider Organization
What is the purpose of the disclosure?
Treatment, payment, or healthcare operations (e.g.,care coordination)
Purposes other than treatment, payment or healthcare operations (e.g., marketing)
Is consent needed?
Is consent needed?
No
Yes

Frequently Asked Question Regarding Disclosures for Purposes of Healthcare Operations

Question: Can health care providers, such as ECM providers or specialty behavioral health providers, or health plans, such as Medi-Cal managed care, share health information with entities such as housing-support organizations for purposes of care coordination?

Answer: Yes. The HIPAA Privacy Rule permits covered entities – including health care providers and health plans – to use or disclose protected health information (PHI), without individual authorization, for purposes of treatment, payment, and healthcare operations.[28] "Healthcare operations" are defined to include "case management and care coordination" activities of a covered entity.[29] This means that housing organizations are able to receive PHI as part of their receipt of referrals for Medi-Cal-covered services, as would housing organizations providing non-Medicaid-covered services, such as county housing organizations for BHSA-funded housing supports.

(For a more detailed analysis, please see p. 5 of this Toolkit.)

Community Supports Housing Navigation and Support Services

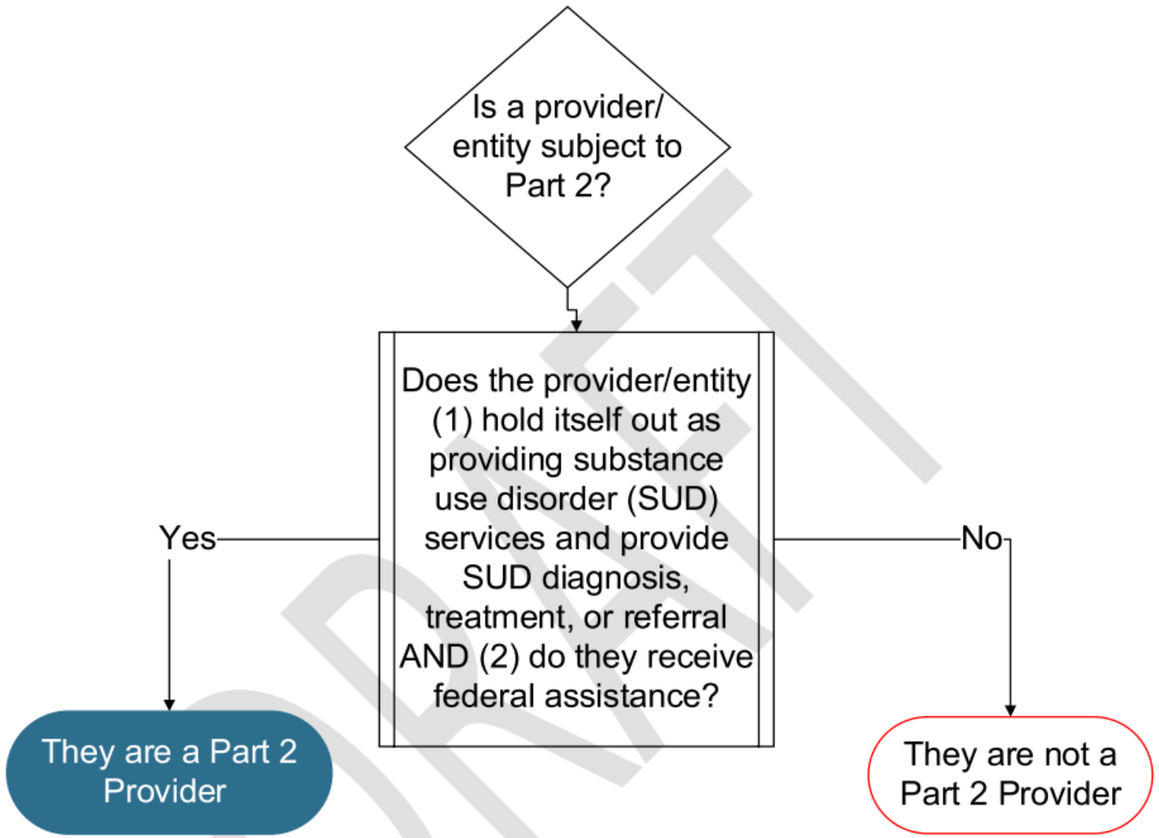
For the purposes of this Toolkit, the provision of Housing Community Supports services to Medi-Cal MCP Members by housing organizations is considered to fall within the scope of treatment and/or care coordination as defined by HIPAA.

[28] 45 C.F.R. §164.506(a).
[29] 45 C.F.R. §164.501

General Process Flow – Part 2 Providers

How to Determine Whether an Individual or Entity is a Part 2 Provider

This data flow provides a decision-tree, along with guiding questions and answers, to help partners determine if they are considered a Part 2 provider. Note that even if a partner is not a Part 2 provider, Part 2 may apply to records they have received from a Part 2 provider. (For more information on Part 2 and its requirements, see page 6.)



Note: Housing providers are usually <u>not</u> Part 2 providers because they do not provide or hold themselves out as providing SUD diagnosis, treatment, or referrals. For more information about whether your organization is a Part 2 provider, please see the Frequently Asked Questions below.

Part 2 Frequently Asked Questions:

This FAQ contains guidance published by the Substance Abuse and Mental Health Services Administration (SAMHSA), the agency within the U.S. Department of Health and Human Services that leads public health efforts to advance behavioral health. All Part 2 providers must comply with all applicable federal requirements under Part 2 and this FAQ is relevant to all Part 2 providers rendering SUD services under the CalAIM 1115 Demonstration Waiver. This FAQ will define several terms that are used throughout the toolkit related to Part 2 Providers.

Question: Is a correctional facility a Part 2 provider?

Answer: While generally correctional facilities do not hold themselves out to the public as providing SUD services and are thus likely not considered Part 2 providers, DHCS defers to the individual correctional facility to make a legal determination as to whether it meets the criteria to be considered a Part 2 provider.

Question: How do I know if I "hold myself out as providing SUD services and provide SUD diagnosis, treatment or referral"?

Answer: According to SAMHSA,[30] a provider may "hold itself out" as providing SUD services if it, among other activities, obtains a state license specifically to provide SUD services, advertises SUD services, has a certification in addiction medicine, or posts statements on its website about the SUD services it provides.[31] Individual clinicians, as well as clinics, hospitals, and other health care facilities, can be Part 2 providers; a physician can be subject to Part 2 even if that physician works in a facility that is not subject to the regulation.[32]

Question: What is considered a federally assisted program?

[30] Substance Abuse and Mental Health Services Administration, "About Us," February 14, 2024, available at https://www.samhsa.gov/about-us.
[31] Substance Abuse and Mental Health Services Administration, "Substance Use and Confidentiality Regulations," October 27, 2023, available at https://www.samhsa.gov/about-us/who-we-are/laws-regulations/confidentiality-regulations-faqs.
[32] CA Department of Health Care Services, "CalAIM Data Sharing Authorization Guidance," October 2023, available at https://www.dhcs.ca.gov/CalAIM/ECM/Documents/CalAIM-Data-Sharing-Authorization-Guidance.pdf.

Answer: A program (e.g., individual, entity (other than a general medical facility) is federally assisted[33] if it:

1. Is authorized, licensed, certified, or registered by the federal government;
2. Received federal funding in any form, even if the funds do not directly pay for the alcohol or drug use services;
3. Is assisted by the Internal Revenue Service through a grant of tax-exempt status or allowance of tax deductions for contributions;
4. Is authorized to conduct business by the federal government (e.g., certified as a Medicare provider, authorized to conduct methadone maintenance treatment, or registered with the Drug Enforcement Agency (DEA) to dispense a controlled substance used in the treatment of alcohol or drug abuse); or
5. Is conducted directly by the government.

Question: What are examples of providers that meet the definition of a Part 2 provider?

Answer: A provider can be either a person or a program. In guidance,[34] SAMHSA has said the following providers, among others, meet the definition of a Part 2 provider:

- A SAMHSA-certified opioid treatment program that advertises its SUD services.
- A physician at a community mental health center who is identified as the center's leading SUD practitioner and who primarily treats patients with SUDs.[35]

Question: Does Part 2 apply to me even if I'm not a Part 2 provider?

Answer: Part 2 records can be disclosed pursuant to an individual's authorization. An entity that is not a covered entity that receives records from a Part 2 provider that is not a covered entity may generally only redisclose those Part 2 records pursuant to scope of the individual's original authorization, or with the individual's authorization. If the individual signed a consent for all future uses and disclosures of SUD information for purposes of treatment, payment, or healthcare operations and the entity that received

[33] Legal Action Center for Substance Abuse and Mental Health Services Administration, "Frequently Asked Questions: Applying the Substance Abuse Confidentiality Regulations to Health Information Exchange (HIE)," 2010, available at "https://www.samhsa.gov/sites/default/files/faqs-applying-fconfidentiality-regulations-to-hie.pdf

[34] Substance Abuse and Mental Health Services Administration, "Substance Use and Confidentiality Regulations," October 27, 2023, available at "https://www.samhsa.gov/about-us/who-we-are/laws-regulations/confidentiality-regulations-faqs

[35] CA Department of Health Care Services, "CalAIM Data Sharing Authorization Guidance," October 2023, available at https://www.dhcs.ca.gov/CalAIM/ECM/Documents/CalAIM-Data-Sharing-Authorization-Guidance.pdf

Part 2 records is a covered entity or business associate, such records may be redisclosed in accordance with HIPAA.[36] For more information on redisclosure of Part 2 records, please see p. 6.

[36] Department of Health and Human Services Fact Sheet 42 CFR Part 2 Final Rule, *available at*: https://www.hhs.gov/hipaa/for-professionals/regulatory-initiatives/fact-sheet-42-cfr-part-2-final-rule/index.html

TOOLKIT SCENARIOS: OVERVIEW

The Toolkit scenarios below are intended to provide examples on how Medi-Cal Partners may need to navigate federal and state laws when sharing data, and how to determine whether consent for disclosure is needed during various interactions between organizations to connect individuals to housing and other needed services. **The scenarios below depict data flows and the consent-determination process for HIPAA, 42 C.F.R. Part 2, and release of information for HMIS.**

The following scenarios provide an overview of the data that can be shared between organizations, and they types of consent that may be needed, as different individuals engage a range of providers to address their housing and ongoing clinical needs.

*Please note that the legal analysis charts and associated diagrams are specific **only** to the data flow that is contemplated by the individual Toolkit scenario.*

MCP Referral to Community Supports Housing Services

Data Sharing Between an MCP and a Community Supports Housing Navigation Organization

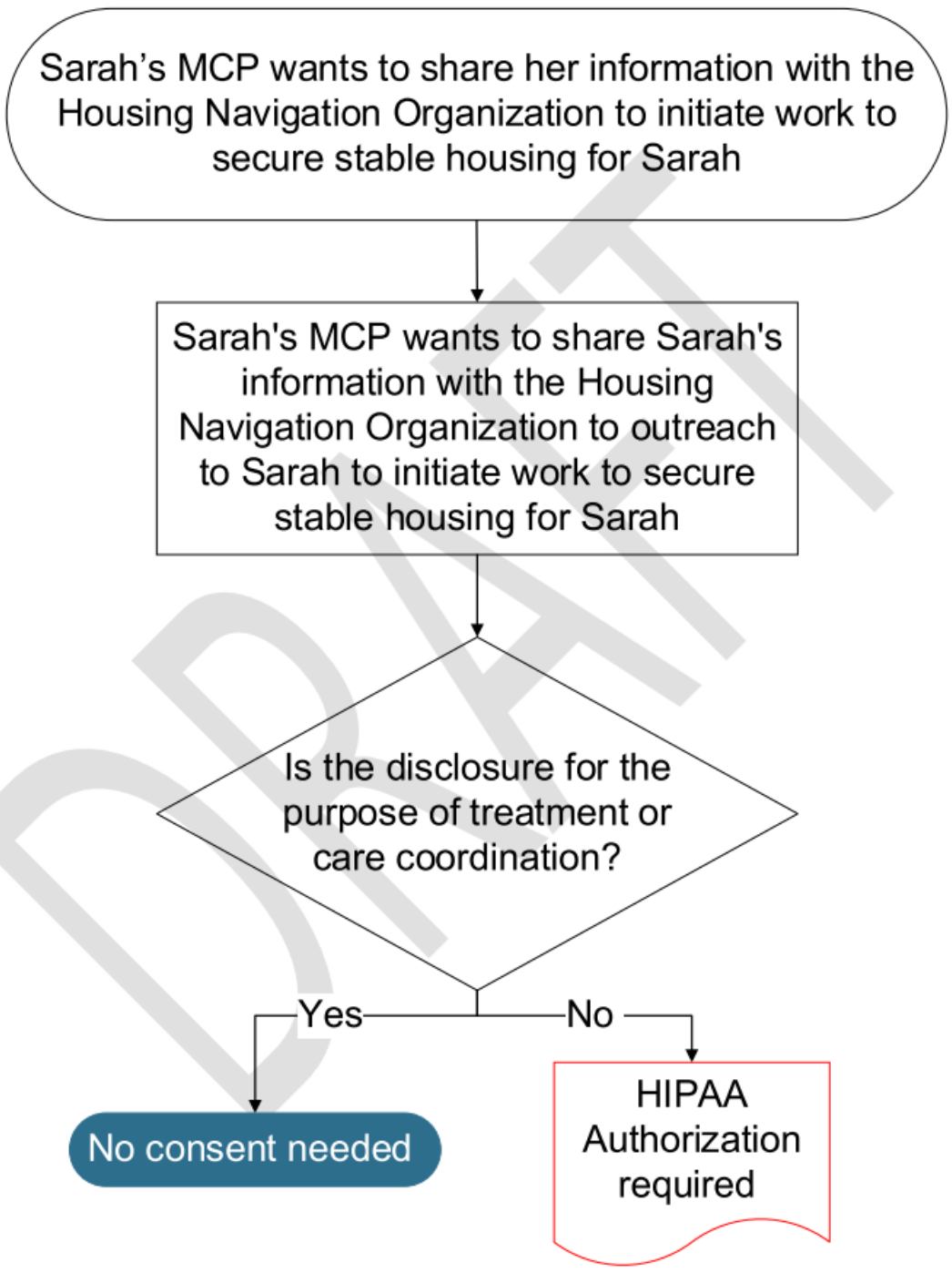
Sarah is 45-year-old woman living in the Bay Area who has lost her home. She has been couch-surfing with friends for the past six months and her lack of a permanent residence is negatively impacting her ability to make it to her clinical appointments and manage her diabetes medications and diet. She is a Medi-Cal MCP member and her MCP authorizes her to receive the Housing Transition Navigation Services Community Support so that she can find stable housing. The MCP contracts with a local Housing Navigation Organization (which is not a covered entity or business associate under HIPAA) to deliver the Community Supports Housing Transition Navigation Services and administer the Community Supports Housing Deposit funds if they find housing for her.

Sarah's MCP would like to share information with the Housing Navigation Organization, including information on a recent hospital stay related to diabetes, her diagnosis and treatment plan, and her housing status and contact information.

Law/Regulation	Applicable?	Key Questions	Consent to share information needed?
HIPAA	Yes	» Is PHI being disclosed for the purpose of Sarah's treatment and/or care coordination?	HIPAA permits covered entities to disclose PHI for purposes of treatment and healthcare operations (e.g., care coordination) without authorization. The MCP can disclose information to the Housing Navigation Organization without individual authorization because such disclosure is for purposes of its care coordination of Sarah. For more information on disclosures of PHI to community-based organizations, see page 5. Once the Housing Navigation Organization receives Sarah's health information, it is no longer

Law/Regulation	Applicable?	Key Questions	Consent to share information needed?
			considered PHI (as the Housing Navigation Organization is not a HIPAA covered entity), and as such the Housing Navigation Organization may use and disclose that information as it chooses.
42 C.F.R. Part 2	No	» Is anyone seeking to obtain or disclose information held by Part 2 provider?	Part 2 information is not being obtained or disclosed in this scenario and as a result no Part 2 consent is required.
AB 133	Yes	» Is the information being shared for the purposes of delivering services under CalAIM (e.g., Community Supports)?	AB 133 permits the sharing of health information among Medi-Cal partners for the purposes of implementing CalAIM without individual authorization, so no consent is required under California state law for these disclosures.

Data Flow for MCP Referral to Community Supports Housing Services Scenario



Engaging an Individual Experiencing Homelessness who has a History of SUD in ECM

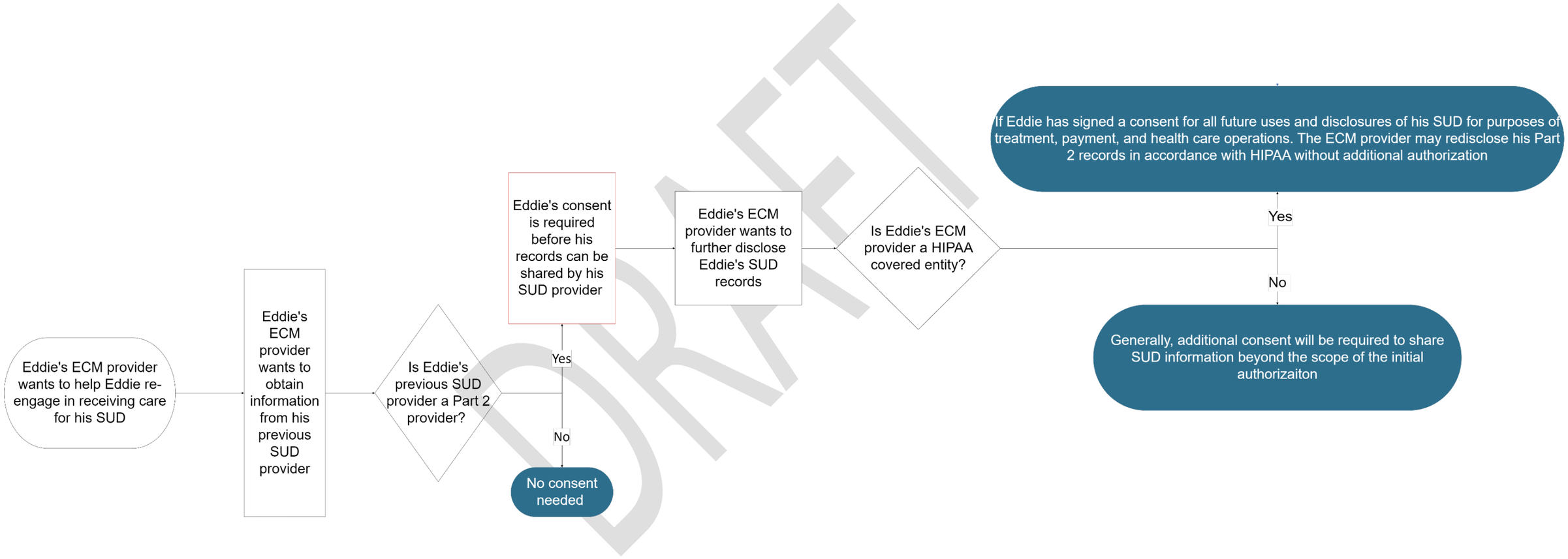
Sharing Data Between a SUD Provider and ECM Organization

Eddie is a 19-year-old LGBTQ man experiencing homelessness in Southern California and a Medi-Cal MCP Member. He has been enrolled in the MCP's ECM program and has an assigned care manager. He has dealt with substance use disorder (SUD) issues and is experiencing severe episodes of paranoia and depression. Eddie is currently residing in a homeless shelter and recovering from a recent stay in the hospital after experiencing a relapse with substance use, and he has stopped going to his outpatient SUD provider. Eddie had not previously signed a consent to disclose his Part 2 records. Eddie's ECM health care provider would like to obtain his treatment records from his previous SUD provider so that the ECM provider can assist Eddie with getting re-engaged in care. Eddie's ECM health care provider may also want to rediscloses these records in the future with organizations assisting Eddie with his housing and other needs.

Law/Regulation	Applicable?	Key Questions	Consent to share information needed?
HIPAA	Yes	» Is the ECM Provider a covered entity under HIPAA? » Is PHI being disclosed for the purpose of Eddie's treatment and/or care coordination?	HIPAA permits covered entities to disclose PHI for purposes of treatment and healthcare operations (e.g., care coordination). Eddie's PHI is being shared between two treating providers – the ECM provider and the SUD provider – for purposes of Eddie's treatment and care coordination. As a result, no HIPAA authorization is required.
42 C.F.R. Part 2	Yes	» Is the SUD Provider a Part 2 provider?	**Initial Disclosure.** In the event that Eddie's SUD provider is a Part 2 provider, Eddie's consent is required to disclose his SUD records. Please see page 14 for

Law/Regulation	Applicable?	Key Questions	Consent to share information needed?
			"How to Determine When 42 C.F.R. Part 2 Applies." **Redisclosure.** Because the ECM provider receiving SUD records from a Part 2 provider is a covered entity under HIPAA, it may use and disclose them for purposes of treatment, payment, and healthcare operations if Eddie has so authorized, and may redisclose them, without additional authorization, in accordance with HIPAA. Please see page 6 for more information on redisclosure of Part 2 records.
AB 133	Yes	» Is the information being shared for the purposes of delivering services under CalAIM (e.g., Community Supports)?	AB 133 permits the sharing of health information among Medi-Cal partners for the purposes of implementing CalAIM without individual authorization, so no consent is required under California state law for these disclosures.

Data Flow for Engaging an Individual Experiencing Homelessness who has a History of SUD in ECM Scenario



Engagement in Housing Services and HMIS Data Collection

Sharing Data Collected by the Community Supports Housing Navigation Organization with HMIS

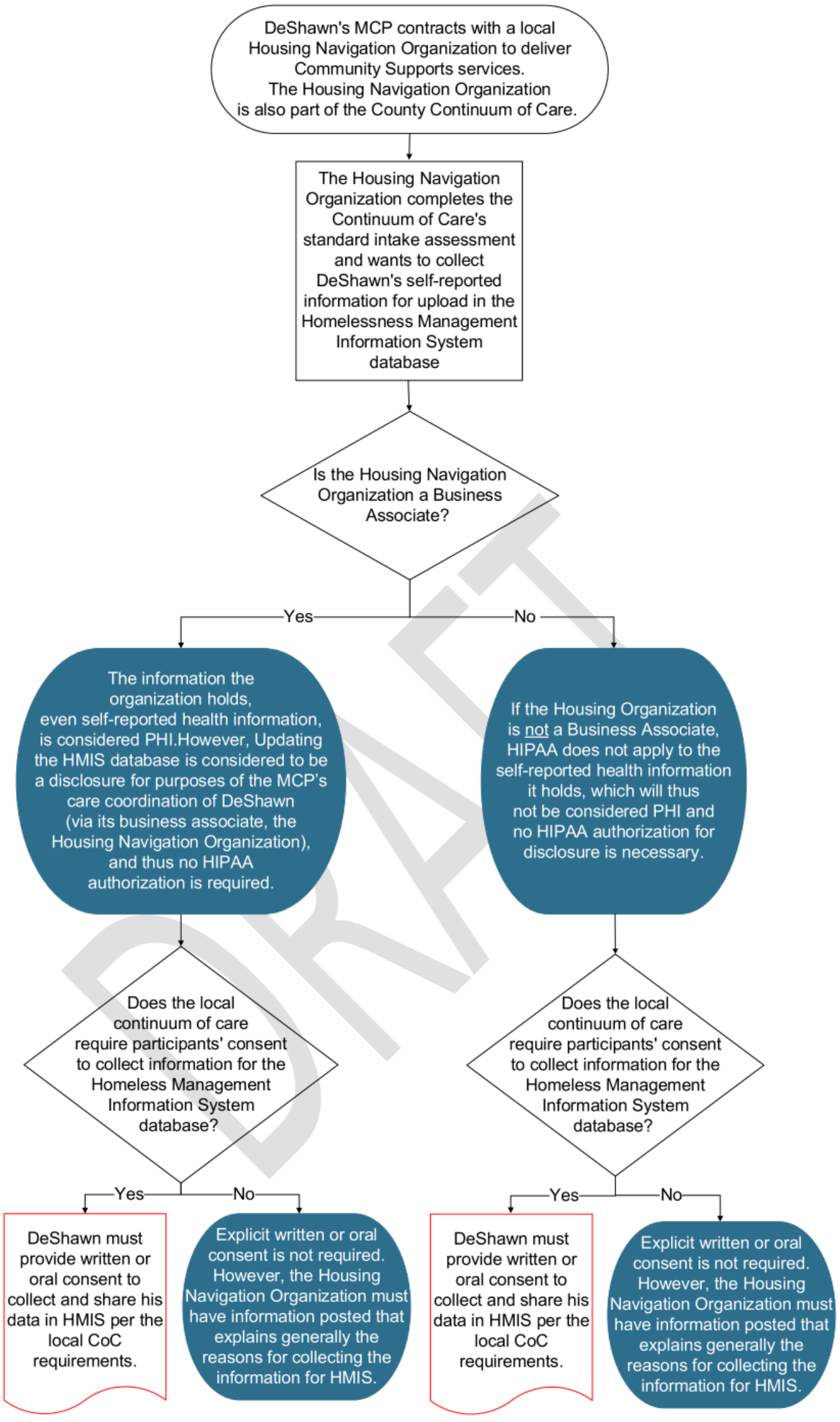
DeShawn is a 60-year-old Medi-Cal Member living in Sacramento who has been experiencing homelessness on and off for the last three years. His MCP authorizes him to receive the Housing Transition Navigation Services Community Support and refers him to a local Housing Navigation Organization. The Community Supports Housing Navigation Organization that DeShawn is referred to is part of Sacramento's Continuum of Care (CoC), which coordinates the delivery of housing services in the county and maintains the Homeless Management Information System (HMIS) database for the CoC.

The Housing Navigation Organization completes a standard intake assessment and would like to upload DeShawn's information to update the county CoC HMIS database, including information on his self-reported mental health diagnosis, self-reported SUD treatment status, and updated contact information.

Law/Regulation	Applicable?	Key Questions	Consent to share information needed?
HIPAA	Maybe	» Has the Housing Navigation Organization signed a Business Associate Agreement with the MCP?	Assuming the Housing Organization is not a Business Associate, HIPAA does not apply to the self-reported health information it collects and holds, and thus no HIPAA authorization for disclosure is necessary. For more information on when HMIS data is and is not considered PHI, refer to page 10.
42 C.F.R. Part 2	No	» Is anyone seeking to obtain or disclose information held by Part 2 provider?	In this scenario, the patient's self-reported SUD treatment status is not Part 2 protected information, because the Housing Navigation Organization is not a Part 2 provider. As a result, no Part 2 consent is required.

Law/Regulation	Applicable?	Key Questions	Consent to share information needed?
Local CoC HMIS Consent Requirements	Yes	» Does the local CoC require all CoC organizations to have participants fill out a release of information (ROI) consent to release information form to HMIS to collect and store protected personal information in the CoC HMIS database?	The HMIS consent requirements depend on the Local CoC, which has discretion to require participants to fill out a consent to collect information.
AB 133	Yes	» Is the information being shared for the purposes of delivering services under CalAIM (e.g., Community Supports)?	AB 133 permits the sharing of health information among Medi-Cal partners for the purposes of implementing CalAIM without individual authorization, so no consent is required under California state law for these disclosures.

Data Flow for Engagement in Housing Services and HMIS Data Collection



Warm Hand-off Between Community Supports Housing Providers

Sharing Data Between Community Supports Providers Contracted with the Same MCP

Jorge is an MCP Member who has been experiencing homelessness and has been working with a Community Supports Housing Navigation Organization for the past several months to look for an apartment. The Community Supports Housing Navigation Organization is not a business associate of the MCP, nor is it a covered entity. Jorge and his Community Supports Housing Navigation Organization are able to find an appropriate and affordable apartment. Utilizing funds approved via Community Supports for the application fee and housing deposit, he applies for the apartment. Jorge's apartment application is approved, and he moves into the unit.

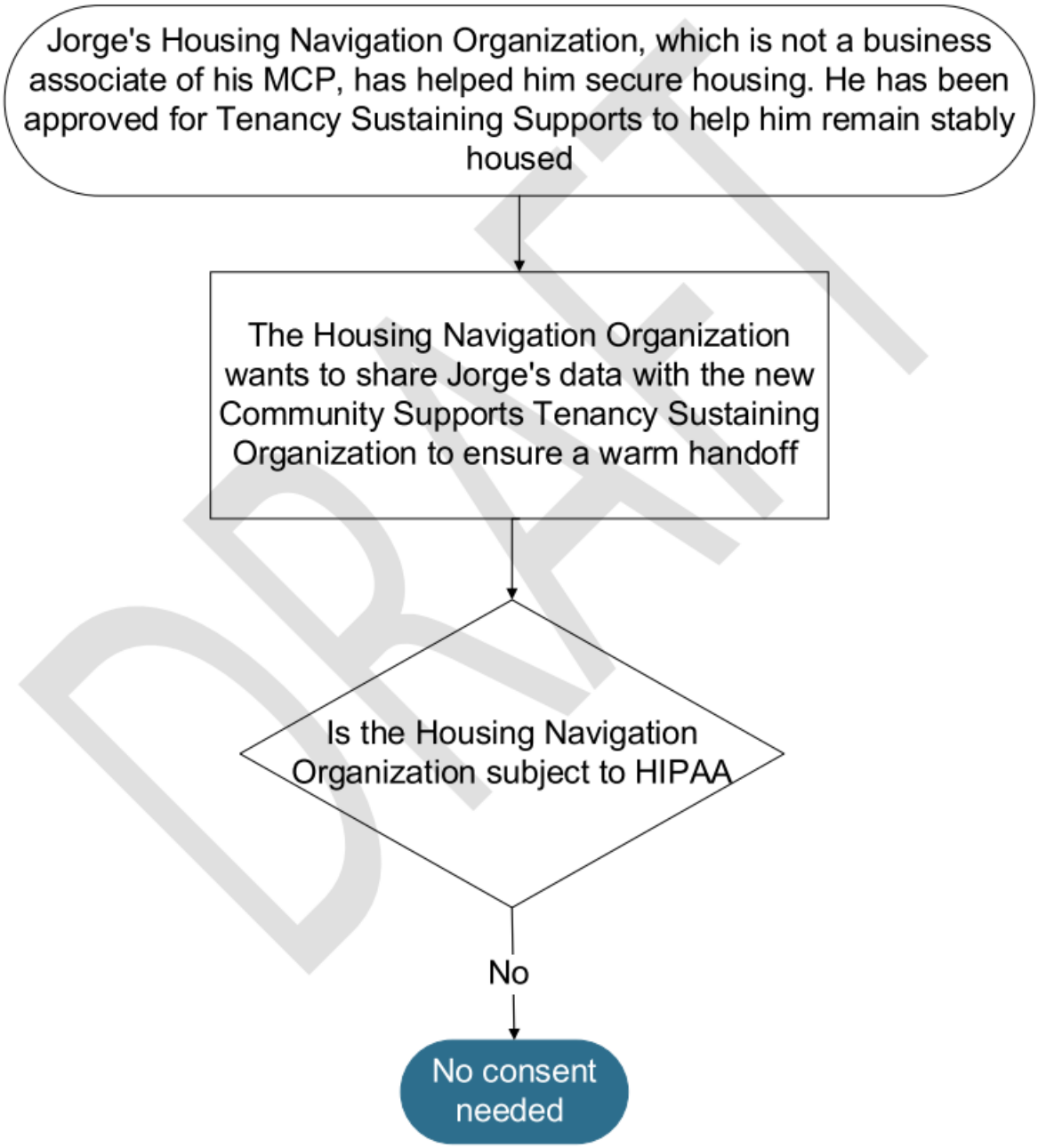
Now that Jorge is housed, his ECM health care provider recommends to his MCP that Jorge be approved and referred to receive Community Support Housing Tenancy and Sustaining Services to help Jorge learn the skills needed to live alone and remain in stable housing. Jorge's MCP approves these new Community Supports services, and Jorge is referred to a different provider, a local Community Supports Tenancy Sustaining Organization, which will reach out to Jorge in his new apartment to provide support services.

Jorge's prior Services Coordinator at the Housing Navigation Organization wants to ensure a good hand-off between the organizations and provide information about Jorge to his new organization – local Community Supports Tenancy Sustaining Organization – so that they can best support him. This information includes Jorge's new address and his hearing loss.

Law/Regulation	Applicable?	Key Questions	Consent to share information needed?
HIPAA	No	» Is the Housing Navigation Organization subject to HIPAA?	Because the Housing Navigation Organization is neither a covered entity or a business associate, HIPAA does not apply and the information it is disclosing to the Community Supports Tenancy Sustaining Organization is not PHI.

Law/Regulation	Applicable?	Key Questions	Consent to share information needed?
42 C.F.R. Part 2	No	» Is anyone seeking to obtain or disclose information held by Part 2 provider?	There is no information related to SUD and held by a Part 2 provider being disclosed in this scenario, and as a result no Part 2 consent is required.
AB 133	Yes	» Is the information being shared for the purposes of delivering services under CalAIM (e.g., Community Supports)?	AB 133 permits the sharing of health information among Medi-Cal partners for the purposes of implementing CalAIM without individual authorization, so no consent is required under California state law for these disclosures..

Data Flow for Warm Handoff Between Community Supports Housing Providers



Lanterman-Petris-Short (LPS) Protected Mental Health Records

Sharing Information from a Mental Health Treatment Hold with a Housing Navigation Organization

May-Lin is experiencing homelessness and has a diagnosis of schizophrenia. May-Lin has been approved for Housing Transition Navigation Community Supports services and has been referred to a Housing Navigation Organization. She is currently residing in a homeless shelter and receiving support from the Community Supports organization to search for an appropriate housing unit. May-Lin experienced a mental health crisis and threatened self-harm in a public location. Local police officers were called, determined that she was a danger to herself, and took her into custody under a 72-hour "5150 hold." May-Lin has been released from the involuntary hold and returned to the homeless shelter where she was residing.

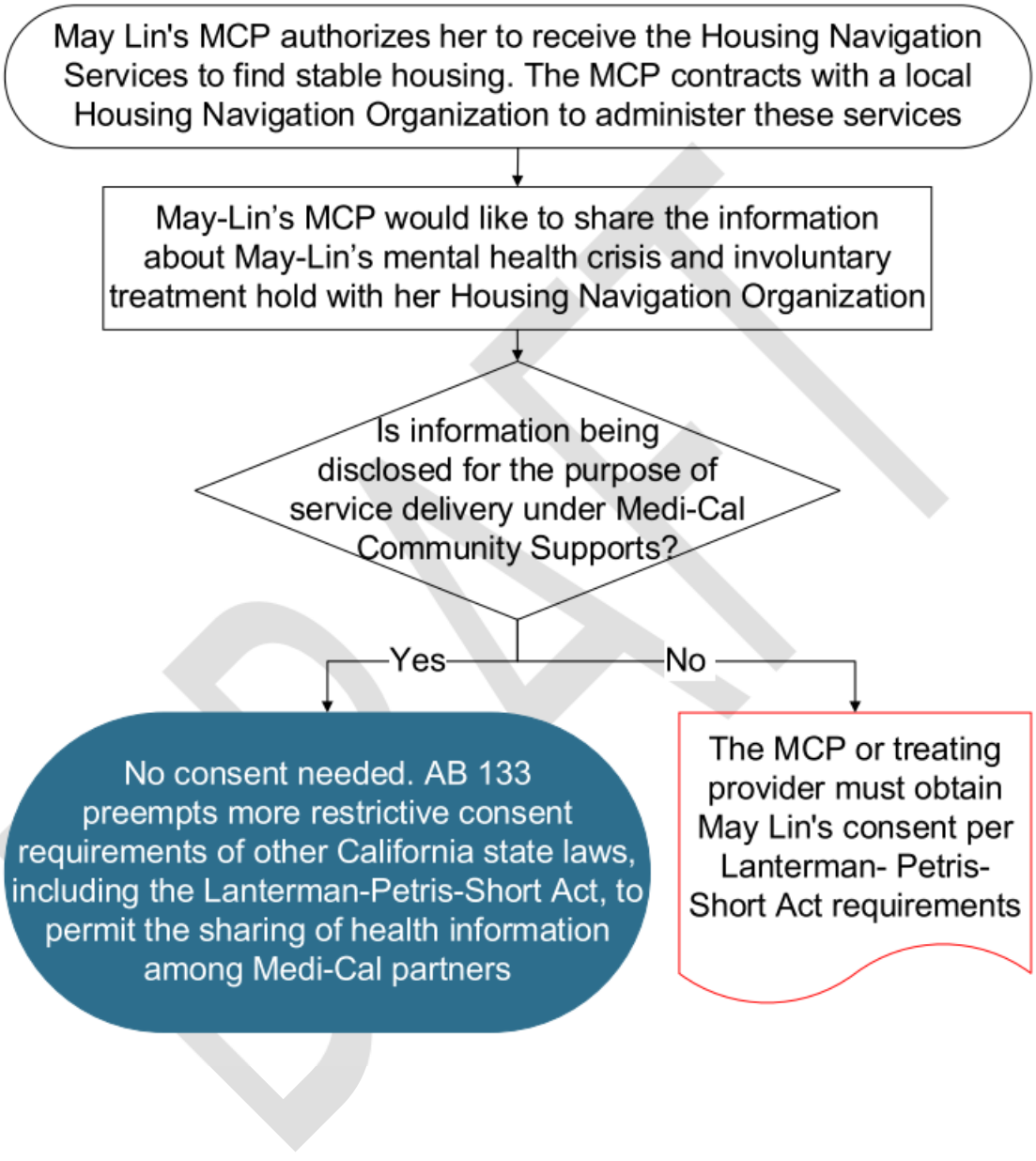
May-Lin's MCP would like to share the information that it has received from her treating provider about May-Lin's mental health crisis and involuntary treatment hold, which is subject to Lanterman-Petris-Short Act consent protections, with her Housing Navigation Organization.

Law/Regulation	Applicable?	Key Questions	Consent to share information needed?
HIPAA	Yes	» Is PHI being disclosed for the purpose of treatment, payment, or health care operations?	HIPAA permits disclosures of PHI by covered entities for purposes of treatment and healthcare operations (e.g., care coordination). Because the MCP is making the disclosure for purposes of its care coordination of May-Lin, no HIPAA consent is required.
42 C.F.R. Part 2	No	» Is anyone seeking to obtain or disclose information held by Part 2 provider?	May-Lin's treating mental health providers are not Part 2 providers, so no Part 2 consent is required.

Law/Regulation	Applicable?	Key Questions	Consent to share information needed?
AB 133	Yes	» Is May-Lin's mental health information protected by California's Lanterman-Petris-Short Act? » Does AB 133 preempt the Lanterman-Petris-Short Act's consent requirements?	Although the Lanterman-Petris-Short Act applies to this disclosure, AB 133 preempts it, meaning no consent is required. AB 133 permits the sharing of health information among Medi-Cal partners for the purposes of implementing CalAIM without individual authorization. This law preempts more restrictive consent requirements of other California state laws, including the Lanterman-Petris-Short Act, to the extent they apply.[37] As a result, no consent is required under California state law for these disclosures.

[37] The preemption by AB 133 to allow sharing of health information among Medi-Cal partners for the purposes of implementing CalAIM without individual authorization also applies to Lanterman Act protected information about a patient's developmental disability status, functional limitations and treatment plan.

Data Flow for Lanterman-Petris-Short Protected Mental Health Records Scenario



GLOSSARY OF TERMS:

1. **Community-Based Organization:** a public or private non-profit organization with a 501(c)(3) status or a fiscally sponsored entity of a 501(c)(3) non-profit organization[38]
2. **Designated Support System**: Family members or guardians of the Medi-Cal individual.
3. **Enhanced Care Management:** a statewide Medi-Cal benefit available to select members with complex needs. Enrolled members receive comprehensive care management from a single lead care manager who coordinates all their health and health-related care, including physical, mental, and dental care, and social services.[39]
4. **ECM Lead Care Manager:** A member's designated care manager for ECM, who works for the ECM Provider. The Lead Care Manager operates as part of the member's care team and is responsible for coordinating all aspects of ECM and referrals for any Community Supports. To the extent a member has other care managers, the Lead Care Manager will be responsible for coordinating with those individuals and/or entities to ensure a seamless experience for the member and non-duplication of services.
5. **ECM Provider:** A Provider of ECM. ECM Providers are community-based entities with experience and expertise providing intensive, in-person care management services to individuals in one or more of the Populations of Focus for ECM.
6. **Health and Social Service Information:** information gathered by a medical provider or community organization that may include personal demographics; housing information; employment and financial needs; and/or receipt of or eligibility for social services.[40]
7. **Medications for SUD:** This includes medications to treat opioid use disorder or medications (MOUD) to treat alcohol use disorder (MAUD), including the

[38] CA Department of Health Care Services, December 2023, "Community-Based Organizations and Local Health Jurisdictions Enrollment", available at https://mcweb.apps.prd.cammis.medi-cal.ca.gov/news/32589
[39] CA Department of Health Care Services, "Medi-Cal Transformation: Enhanced Care Management," available at https://www.dhcs.ca.gov/CalAIM/Documents/CalAIM-ECM-a11y.pdf
[40] California Health Care Foundation "Consent-to-Share: California's Opportunity to Modernize Cross- Sector Data Sharing," October 2023, available at https://www.chcf.org/wp-content/uploads/2023/10/ConsentToShareCACrossSectorDataSharing.pdf

important use of medication as a stand-alone treatment without the prerequisite use of psychosocial services, when clinically indicated.

8. **Mental Health Plans:** Health plans run through county behavioral health departments which are responsible for the delivery of care for patients with specialty mental health issues that result in impairment in functioning, and for emergency and in-patient behavioral health services for all Medi-Cal beneficiaries.[41]
9. **Managed Care Plan (MCP):** Medi-Cal contracts for health care services through established networks of organized systems of care, which emphasize primary and preventive care. MCPs are a cost-effective use of health care resources that improve health care access and assure quality of care.
10. **Protected Health Information:** Individually identifiable health information, held or maintained by a covered entity or its business associates acting for the covered entity, that is transmitted or maintained in any form or medium (including the individually identifiable health information of non-U.S. citizens). This includes identifiable demographic and other information relating to the past, present, or future physical or mental health or condition of an individual, or the provision or payment of health care to an individual that is created or received by a health care provider, health plan, employer, or health care clearinghouse.[42]
11. **Medi-Cal Specialty Mental Health Services:** a group of Medi-Cal mental health services covered under county mental health plans that are available to children, youth, and adults with a diagnosed or suspected mental health disorder that causes significant impairment or has reasonable probability of causing significant deterioration in an important area of life functioning. These services may include crisis counseling, individual/group/family therapy, medication management, targeted case management, psychological testing, psychiatric inpatient hospitalization, and recovery services.[43]

[41] California Health Care Foundation, "Medi-Cal and Behavioral Health Services," February 2019, available at https://www.chcf.org/wp-content/uploads/2019/02/MediCalExplainedBehavioralHealth.pdf
[42] National Institutes of Health, "What Health Information is Protected by the Privacy Rule?" available at https://privacyruleandresearch.nih.gov/pr_07.asp
[43] CA Department of Health Care Services. "Medi-Cal Specialty Mental Health Services", available at https://www.dhcs.ca.gov/services/Pages/Medi-cal_SMHS.aspx