

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

Updated April 9, 2025

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# INTRODUCTION TO MEDI-CAL HOUSING SUPPORT SERVICES TOOLKIT

## Overview

This Toolkit is designed to guide Medi-Cal Partners<sup>1</sup> 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.<sup>2,3</sup> 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 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.

### **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.*

<sup>1</sup> 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, 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.

<sup>2</sup> 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>

<sup>3</sup> "Member(s)" refers to people receiving services under the conditions of AB 133, which includes those who are or will be enrolled in a managed care plan within Medi-Cal, individuals who are justice involved, and individuals not enrolled in managed care who receive behavioral health services. Other Medi-Cal members solely served by the fee for service delivery system for physical health, who are neither recipients of behavioral health services nor qualified inmates receiving targeted pre-release Medi-Cal benefits, are not included.

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In particular, the legal status – under either HIPAA, Part 2, or both – of any individual organization is an entity-specific determination and nothing in this Toolkit is meant to confer such status. It merely provides broad parameters within which Medi-Cal Partners can think through data flows and associated obligations.

Medi-Cal managed care plans (MCPs) offer a number of services to support Members experiencing homelessness, including through Enhanced Care Management (ECM) and Community Supports. Medi-Cal Community Supports are services offered by MCPs to address Medi-Cal Members' health-related social needs, help them live healthier lives, and avoid 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<sup>4</sup> 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.<sup>5</sup>

<sup>4</sup> Note that this Toolkit does not include Community Supports Transitional Rent services. At the time of Toolkit publication, the Transitional Rent services are still pending launch. However, the analysis provided here for other housing Community Supports services is applicable to Transitional Rent services as well upon their launch.

<sup>5</sup> CA Department of Health Care Services, "CalAIM Enhanced Care Management (ECM) and Community Supports," accessed February 19, 2025, *available at*: <https://www.dhcs.ca.gov/CalAIM/ECM/Pages/Home.aspx>.

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This Toolkit does not contain scenarios in which data may be shared during a California state or federal “state of disaster or emergency.” More information about data sharing under these circumstances can be found in the California Office of Health Information Integrity – Disaster Response and Information Sharing during Emergencies document.<sup>6</sup>

### Toolkit Structure

This Toolkit includes a series of scenarios and accompanying diagrams to help the user identify if they need Member consent before sharing member information. Each scenario is based on a fictional Medi-Cal Member and illustrates the relevant factors and decision-points that determine whether Member consent is needed to share data, and why. **These scenarios are illustrative in nature and do not constitute legal advice.**

In instances when individual consent is required to share sensitive information (e.g., substance use disorder (SUD) records protected by 42 C.F.R. Part 2), Medi-Cal Partners must utilize a consent to disclose information form that complies with federal and state data sharing laws (see [Overview of Applicable Laws and Regulations](#) for more information). Medi-Cal Partners should consult their legal and privacy officers to identify an acceptable consent to disclose information form. DHCS encourages Medi-Cal Partners to obtain Member consent using the forthcoming refined Authorization to Share Confidential Member Information (ASDMI)<sup>7</sup> Form. The ASDMI Form is intended for providers to obtain consent from members for the sharing of certain sensitive health and social service information (HSSI), including Part 2 SUD records, as well as to inform individuals of their privacy rights and the process to express their consent preferences for data disclosures. DHCS piloted the ASDMI Form in 2023 and expects to publish an updated version in 2025.

### 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 and their families experiencing or at risk of homelessness
- » MCPs
- » Medi-Cal ECM providers
- » Medi-Cal Community Supports contracted housing provider organizations

<sup>6</sup> [California Office of Health Information Integrity – Disaster Response and Information Sharing during Emergencies](https://www.cdii.ca.gov/wp-content/uploads/2022/12/CalOHII-Disaster-Response-Info-Sharing-during-Emergency.pdf) available at: <https://www.cdii.ca.gov/wp-content/uploads/2022/12/CalOHII-Disaster-Response-Info-Sharing-during-Emergency.pdf>

<sup>7</sup> [CalAIM ASDMI Pilot](#).

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- » 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 SUD or mental health needs)
- » County Social Services Departments (SSDs) (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

### **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

# 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.”<sup>8</sup> Covered entities include health care providers and payers, such as doctors, hospitals, clinics, behavioral health care providers, ECM providers, Medi-Cal MCPs, and the Department of Health Care Services (DHCS) HIPAA also applies to business associates, which 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.

HIPAA permits disclosure of PHI by covered entities for certain purposes – including treatment, which is broadly defined to include care coordination; 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.

HIPAA permits covered entities, including MCPs, to disclose PHI without individual authorization to social services agencies, community-based organizations, and other similar third parties, including housing support services, 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.<sup>9</sup>

Notably, HIPAA contains an important requirement governing the amount of PHI that can be disclosed in most situations. Known as the “minimum necessary” rule, it requires that disclosures of PHI be limited to the minimum necessary to accomplish the intended purpose.<sup>10</sup> Importantly, HIPAA explicitly excludes requests by or disclosures to health

<sup>8</sup> 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>

<sup>9</sup> 45 C.F.R. § 164.506(c)(1).

<sup>10</sup> 5 CFR § 164.502(b).

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care providers for treatment purposes from this requirement.<sup>11</sup> However, in the event that, for example, an individual's primary care provider or MCP wants to share information with a non-covered entity, such as a housing provider, to enable the housing provider to schedule appointments or assist with follow-up care, only the minimum amount of information necessary to facilitate that assistance can be disclosed.



### 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 treatment, care coordination or case management.

**Note: Assumptions for this Toolkit** *Not all providers of health care are subject to HIPAA. However, for purposes of the scenarios outlined in this Toolkit, we are assuming:*

- *The described health care providers, including ECM providers and those who deliver health care through behavioral health entities, are covered entities under HIPAA.<sup>12</sup>*
- *County behavioral health agencies are covered entities under HIPAA.*
- *County SSDs and providers of health-related social services (e.g., housing support organizations) involved in the Toolkit's scenarios are not HIPAA covered entities.<sup>13</sup>*

**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, or Part 2 program, and that would identify an individual as having or having had a SUD.

<sup>11</sup> 45 C.F.R. §164.502(b).

<sup>12</sup> 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.

<sup>13</sup> DHCS recognizes that there may be circumstances in a County SSD is a covered entity or has a business associate agreement in place with a covered entity, making it subject to HIPAA. This Toolkit is explicitly focused on situations in which the County SSD is neither a covered entity nor a business associate.

**Key Consideration:**

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 actually provide SUD diagnosis, treatment, or referral for treatment. This typically means that the program advertises SUD services or has a specialty SUD license. If a provider offers both SUD and non-SUD care, then the provider can elect to have Part 2 apply to only an identified unit that holds itself out as providing SUD care or staff identified as primarily providing SUD care, in lieu of the entire program. Many, but not all, SUD providers are “Part 2 providers.” For more guidance regarding Part 2 providers, please see the [Part 2 FAQs](#).

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 2024 Part 2 final rule, 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.”

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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 is in accordance with the HIPAA Privacy Rule.<sup>14</sup> When recipients of Part 2 records are not covered entities or business associates (e.g., most providers of housing support services), individual authorization for redisclosure of Part 2 information may be required. Additional authorization is not required when non-covered entity/non-business associate recipients of Part 2 information for payment or health care operations activities are redisclosing those records as necessary for their contractors, subcontractors, or legal representatives to carry out the payment or health care operations specified in the consent.<sup>15</sup>

**Note:** *The federal statute underlying the Part 2 regulations incorporates the HIPAA Privacy Rule definitions of "treatment" and "health care operations," which, as explained above, include care coordination 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, a law passed in July 2021, 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 Guidance, describing AB 133<sup>16</sup>). AB 133 permits Medi-Cal Partners to disclose PII and PHI as long as such disclosures improve care coordination and health outcomes and are consistent with federal law, including HIPAA and Part 2.<sup>17</sup> In doing so, AB 133 limits the application of certain state

<sup>14</sup> 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).

<sup>15</sup> 42 C.F.R §2.33(b)(3). The recipient must have a contract in place with the contractor or legal representative that meets certain requirements set forth in §2.33(c); Entities have until February 16, 2026, to comply with the updated Part 2 regulations.

<sup>16</sup> 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>.

<sup>17</sup> 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, MCPs, Tribal Health Programs, health care providers, community-based social and human services organizations and

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privacy laws so that information can be shared more easily in order to coordinate care for purposes of implementing CalAIM. In effect, this means that , 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 overridden by AB 133<sup>18</sup>, such as:

- » *Health and Safety Code § 11845.5 (which governs SUD records);<sup>19</sup>*
- » *Health and Safety Code § 121010 (which governs HIV/AIDS information);<sup>20</sup>*
- » *The Confidentiality of Medical Information Act which governs disclosures of medical information and has special protections for abortion-related information.<sup>21</sup>*

These analyses are not included because AB 133 applies in each of the Toolkit scenarios, overriding the consents required by those laws. 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 California 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 overriding of more restrictive state data-sharing laws allowed by AB 133, AB 210 permits sharing and exchanging of otherwise confidential information 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).

**Note:** 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

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.

<sup>18</sup> 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>.

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housing organization has signed its 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;
- » 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 overridden 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)<sup>19</sup> 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 public and private entities that include civic groups, educational institutions, faith-based organizations, health and mental health care providers, local government, and non-

<sup>19</sup> 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/>.

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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.<sup>20</sup> Organizations within a CoC can receive HUD funding to support programs on homelessness prevention, permanent housing, transitional housing, and support services to help individuals enter navigate the re-housing system.<sup>21</sup> California is divided into 44 CoCs.<sup>22</sup>

Each CoC is also responsible for setting up and maintaining 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 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.

<sup>20</sup> HUD Exchange, "Continuum of Care (CoC) Program," accessed April 17, 2024, *available at*: <https://www.hudexchange.info/programs/coc/>.

<sup>21</sup> HUD, "Continuum of Care (CoC) Program Competition," February 2024, *available at*: [https://www.hud.gov/program\\_offices/comm\\_planning/coc/competition](https://www.hud.gov/program_offices/comm_planning/coc/competition)

<sup>22</sup> Homeless Strategy, "Maps for California Continuums of Care," accessed April 17, 2024, *available at*: <https://homelesstrategy.com/maps-for-california-continuums-of-care/>.

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### **Governance of HMIS Data**

HUD establishes standards regarding the data elements that must be collected for HMIS and the format in which they should be collected.<sup>23</sup> 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.<sup>24</sup>

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,<sup>25</sup> 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 a uniform adoption, every CHO must have its own Privacy Notice that meets the HMIS privacy standards.<sup>26</sup>

HUD provides a model Privacy Notice,<sup>27</sup> 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.<sup>28</sup> CoCs and CHOs are also required to ensure that individuals have access to their information and an avenue to file a complaint.<sup>29</sup>

<sup>23</sup> U.S. Department of Housing and Urban Development, "2004 HMIS data and technical standards final notice. HUD Exchange," available at: <https://www.hudexchange.info/resource/1318/2004-hmis-data-and-technical-standards-final-notice/>.

<sup>24</sup> HUD Exchange, "HMIS Data Dictionary," accessed April 17, 2024, available at: <https://www.hudexchange.info/news/hud-releases-updates-to-hmis-data-standards/>.

<sup>25</sup> 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>.

<sup>26</sup> Coordinated Entity Management and Data Guide, available at: [coordinated-entry-management-and-data-guide.pdf](https://www.hudexchange.info/files/coordinated-entry-management-and-data-guide.pdf).

<sup>27</sup> HUD " Baseline Model Privacy Notice for Homeless Organizations," available at: [HMISPrivacyNoticeDevelTemplate.doc](https://www.hudexchange.info/files/hmis-privacy-notice-developer-template.doc).

<sup>28</sup> HUD Requirements for Privacy and Security for HMIS, available at: [Privacy-and-Security-Toolkit-Introduction.pdf](https://www.hudexchange.info/files/privacy-and-security-toolkit-introduction.pdf).

<sup>29</sup> Coordinated Entity Management and Data Guide, available at: [coordinated-entry-management-and-data-guide.pdf](https://www.hudexchange.info/files/coordinated-entry-management-and-data-guide.pdf).

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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. 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. 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.<sup>30</sup>

Although some organizations and CoCs in California require written consent by individuals to share data collected and stored in HMIS,<sup>31</sup> importantly, potential program participants cannot be denied homeless or housing services if they refuse to sign an HMIS Release of Information.<sup>32</sup>

### **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 nor a business associate will not constitute PHI under HIPAA. A housing organization that is not subject to HIPAA can therefore disclose information in accordance with HUD rules and the CoC's notice of privacy practices.
- » 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.

<sup>30</sup> 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/>.

<sup>31</sup> 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>.

<sup>32</sup> 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/>

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- » 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 portion of its PPI is PHI regulated by HIPAA,<sup>33</sup> 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.<sup>34</sup>

### Key Takeaways:



- 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 HUD rules and the CoC's privacy notice.
- If a housing organization has signed a Business Associate Agreement with a HIPAA-covered entity, it must evaluate the types of its data that are considered PHI in order to determine the extent to which HUD privacy rules apply.
- Housing organizations are recommended to consult with their legal counsel in order to understand whether they are a covered entity or business associate, and the nature of the data they hold.

<sup>33</sup> 69 Fed. Reg. 45888 (July 30, 2024), at 45930.

<sup>34</sup> An authorization to disclose PHI must meet the requirements at 45 C.F.R. § 164.508(b).

## **Overview of General Process Flows**

The purpose of this high-level general process flow is to help Medi-Cal Partners understand how data-sharing can occur under HIPAA, and whether consent for each specified data exchange scenario is required.

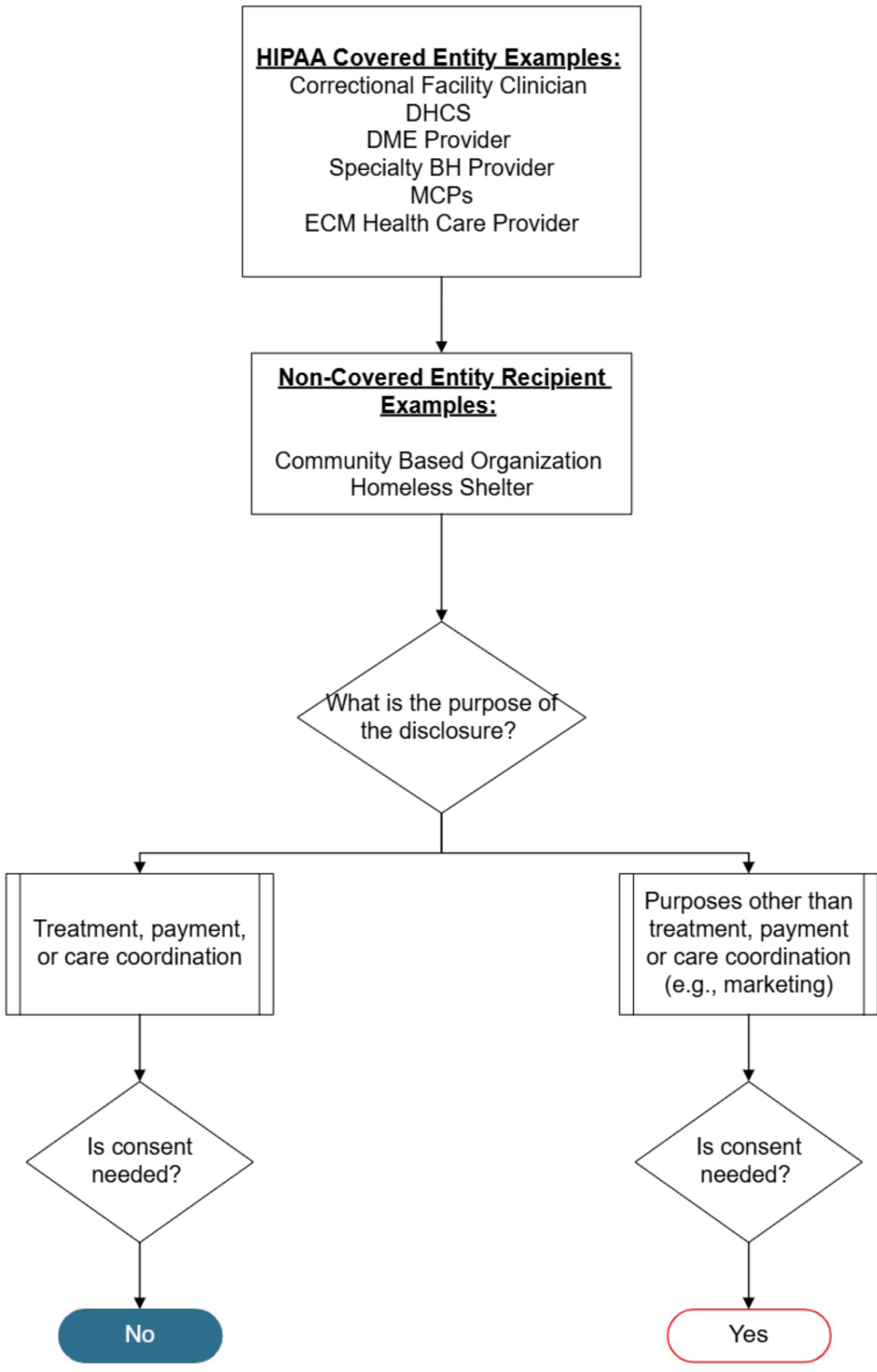
### ***Disclaimer***

*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.*

### **Example of Data Exchange Governed By HIPAA Entities**

This diagram provides an example of the exchange of PHI between HIPAA covered entities and non-covered entities, such as many housing providers. The diagram 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.

**Note:** As you will see in the scenarios, housing organizations are generally not considered to be covered entities. However, depending on each organization's specific circumstances, they may consider themselves covered entities, or they may have business associate agreements with covered entities. Housing organizations are recommended to consult with their legal counsel in order to understand whether they are a covered entity or business associate, and the nature of the data they hold.



## 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 PHI, without individual authorization, for purposes of treatment, payment, and healthcare operations.<sup>35</sup> “Treatment” is broadly defined as the “provision, coordination, or management of health care and related services among health care providers or by a health care provider with a third party, consultation between health care providers regarding a patient, or the referral of a patient from one health care provider to another.”<sup>36</sup> “Healthcare operations” are defined to include “case management and care coordination” activities of a covered entity.<sup>37</sup> For examples, this means that housing organizations are able to receive PHI from covered entities as part of their receipt of referrals for Medi-Cal-covered services. Housing organizations may also receive PHI from covered entities for coordinating non-Medicaid-covered services, such as BHSA-funded housing supports. A BAA is not necessary when a covered entity is making a disclosure for to such an entity treatment, payment, or healthcare operations purposes, including to a non-covered entity recipient.

HHS has also been explicit in guidance that “HIPAA allows health care providers to disclose [PHI]...to other public or private sector entities providing social services (such as housing, income support, job training) in specified circumstances,” and, further, that “health care providers who believe that disclosures to certain social service entities are a necessary component of, or may help further, the individual’s health or mental health care may disclose the minimum necessary PHI to such entities without the individual’s authorization. For example, a provider may disclose PHI about a patient needing mental health care supportive housing to a service agency that arranges such services for individuals.”<sup>38</sup>

<sup>35</sup> 45 C.F.R. §164.506(a).

<sup>36</sup> HHS Guidance, “Uses and Disclosures for Treatment, Payment, and Health Care Operations,” available at: <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/disclosures-treatment-payment-health-care-operations/index.html>.

<sup>37</sup> 45 C.F.R. §164.501.

<sup>38</sup> [HHS FAQ 3008](#).

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For a more detailed analysis, please see the **Health Insurance Portability and Accountability Act of 1996 (HIPAA)** overview section of this toolkit.

### **Key Takeaway: Community Supports Housing Navigation and Support Services**

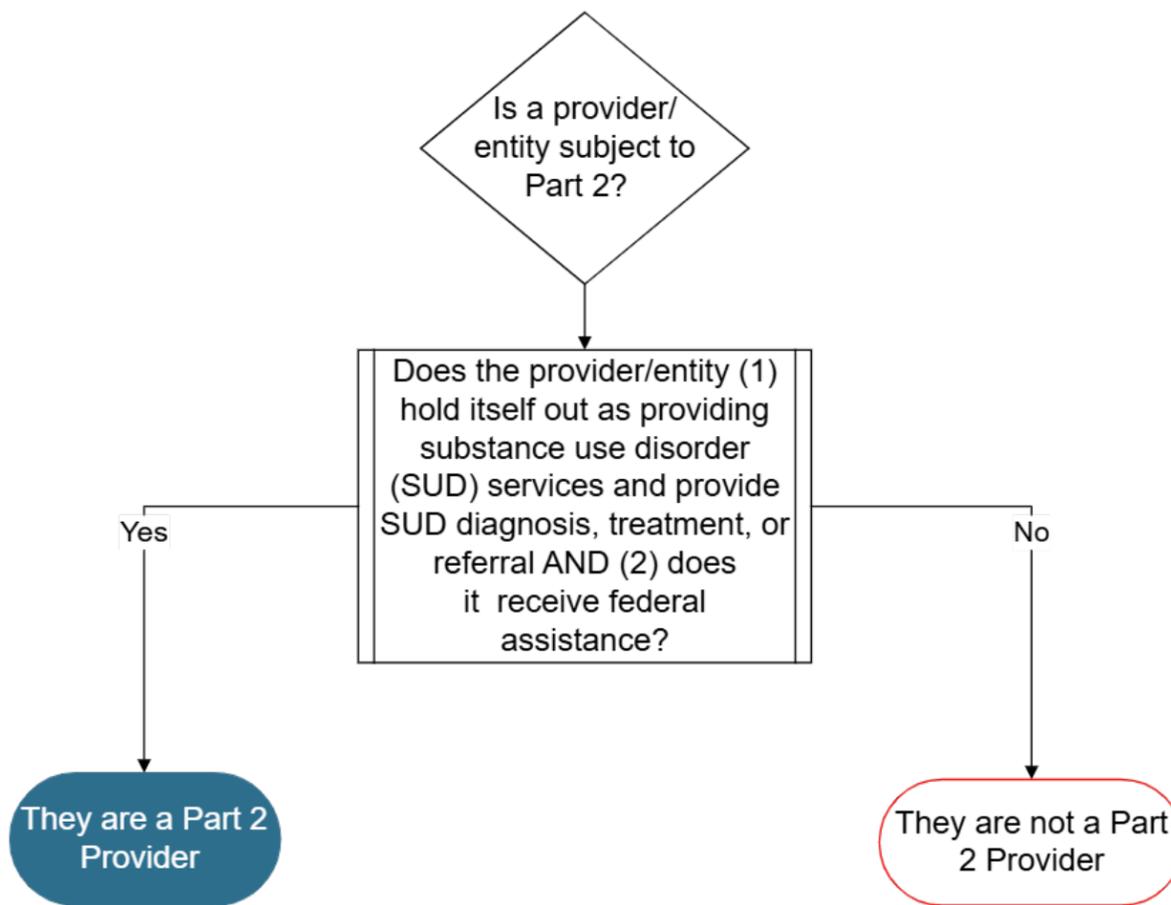


For the purposes of this Toolkit, the provision of Housing Community Supports services to Medi-Cal MCP Members by housing organizations is considered to fall within the scope of treatment and/or care coordination as defined by HIPAA.

## **General Process Flow – Part 2 Providers**

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

This diagram provides a high-level decision-tree, regarding how to determine an individual or entity's status under Part 2. Note that even if a Partner is not a Part 2 provider, Part 2 may apply to records it has received from a Part 2 provider. (For more information on Part 2 and its requirements, see the **42 C.F.R. Part 2** overview section of this toolkit.)



*Note: Housing providers are usually not 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 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 these FAQs are relevant to all Part 2 providers rendering SUD services under the CalAIM 1115 Demonstration Waiver. These FAQs 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,<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup>

**Question:** What is considered a federally assisted program?

<sup>39</sup> Substance Abuse and Mental Health Services Administration, “About Us,” February 14, 2024, available at <https://www.samhsa.gov/about-us>.

<sup>40</sup> 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>.

<sup>41</sup> 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>.

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**Answer:** A program (e.g., individual, entity (other than a general medical facility)) is federally assisted<sup>42</sup> 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 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,<sup>43</sup> 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.<sup>44</sup>

**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. 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 Part 2 records is a covered entity or business associate, such records may be redisclosed

<sup>42</sup> 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://archive.org/details/nchie-legal-policy-workgroup-samhsa-faq-2010-06-28>

<sup>43</sup> 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>.

<sup>44</sup> 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>.

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in accordance with HIPAA.<sup>45</sup> When recipients of Part 2 records are not covered entities or business associates (e.g., most providers of housing support services), individual authorization for redisclosure of Part 2 information may be required. Additional authorization is not required, however, when non-covered entity/non-business associate recipients of Part 2 information for payment or health care operations activities are redisclosing those records as necessary for their contractors, subcontractors, or legal representatives to carry out the payment or health care operations specified in the consent.<sup>46</sup>

<sup>45</sup> 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>.

<sup>46</sup> 42 C.F.R §2.33(b)(3). The recipient must have in place a written contract with the contractor or legal representative that meets certain requirements set forth in §2.33(c).

## **TOOLKIT SCENARIOS: OVERVIEW**

The Toolkit scenarios below are intended to provide examples of 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 scenarios provide an overview of the data that can be shared between organizations, and the types of consent that may be needed as different individuals engage providers to address their housing and ongoing clinical needs.

*Please note that the legal analysis charts and associated diagrams are specific only to the diagram 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 left her home because of domestic violence by her partner. She has been residing in a domestic violence shelter for the past two 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.

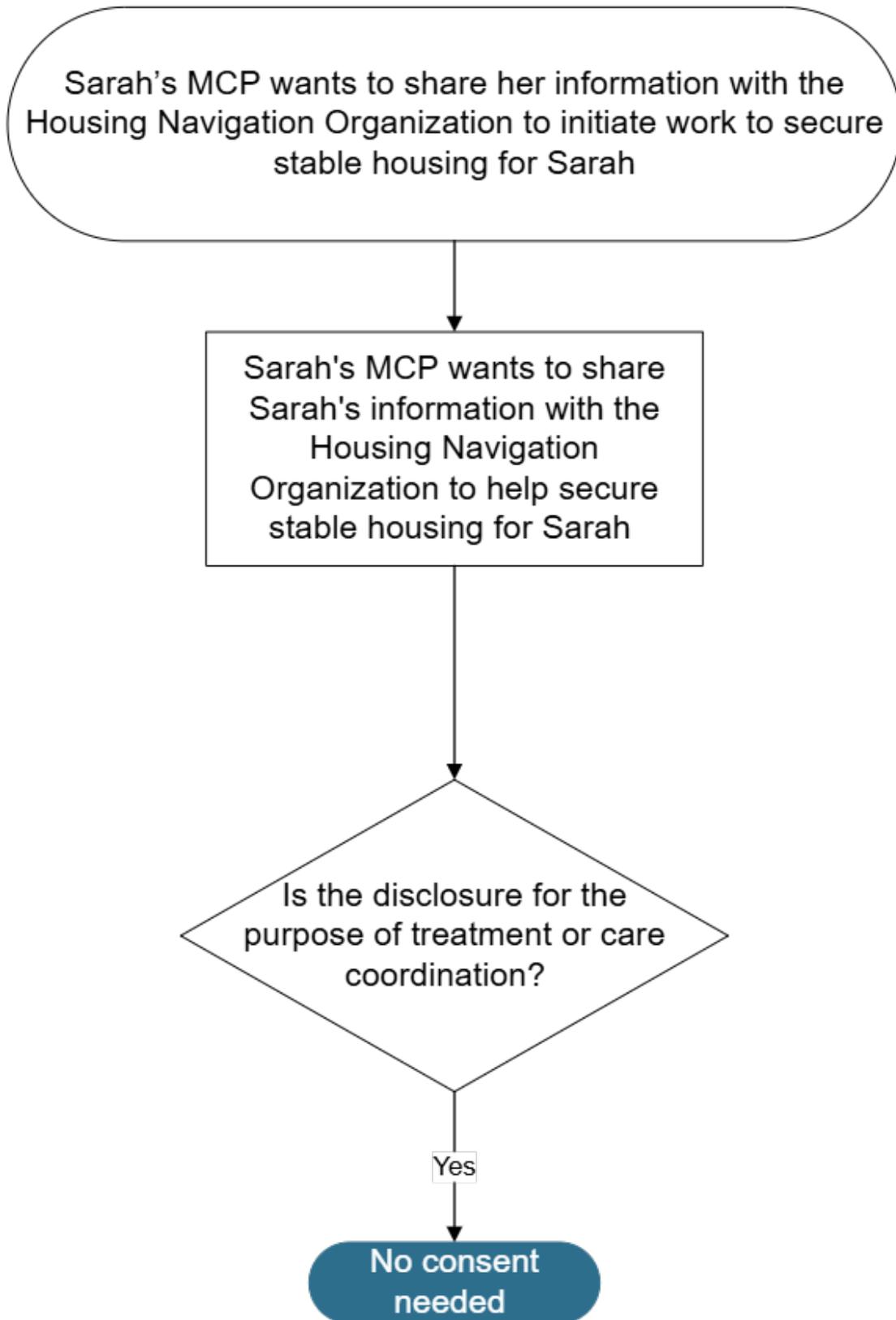
<b>Law/Regulation</b>	<b>Applicable?</b>	<b>Key Questions</b>	<b>Consent to share information needed?</b>
HIPAA	Yes	<ul style="list-style-type: none"> <li>» Is PHI being disclosed for the purpose of Sarah’s treatment and/or care coordination?</li> <li>» Is the MCP a covered entity?</li> <li>» Is the Housing Organization a covered entity or business associate?</li> </ul>	<p><b>No.</b> 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.</p> <p>Once the Housing Navigation Organization receives Sarah’s health information, it is no longer considered PHI (as the Housing Navigation Organization is not a HIPAA covered entity or business associate), and as such the Housing Navigation Organization may use and disclose that</p>

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

**Diagram 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 currently residing in a homeless shelter serving transition age youth 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 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 has not previously signed a consent to disclose his Part 2 records. Eddie’s ECM 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 provider may also want to redisclose these records in the future with organizations assisting Eddie with his housing and other needs.

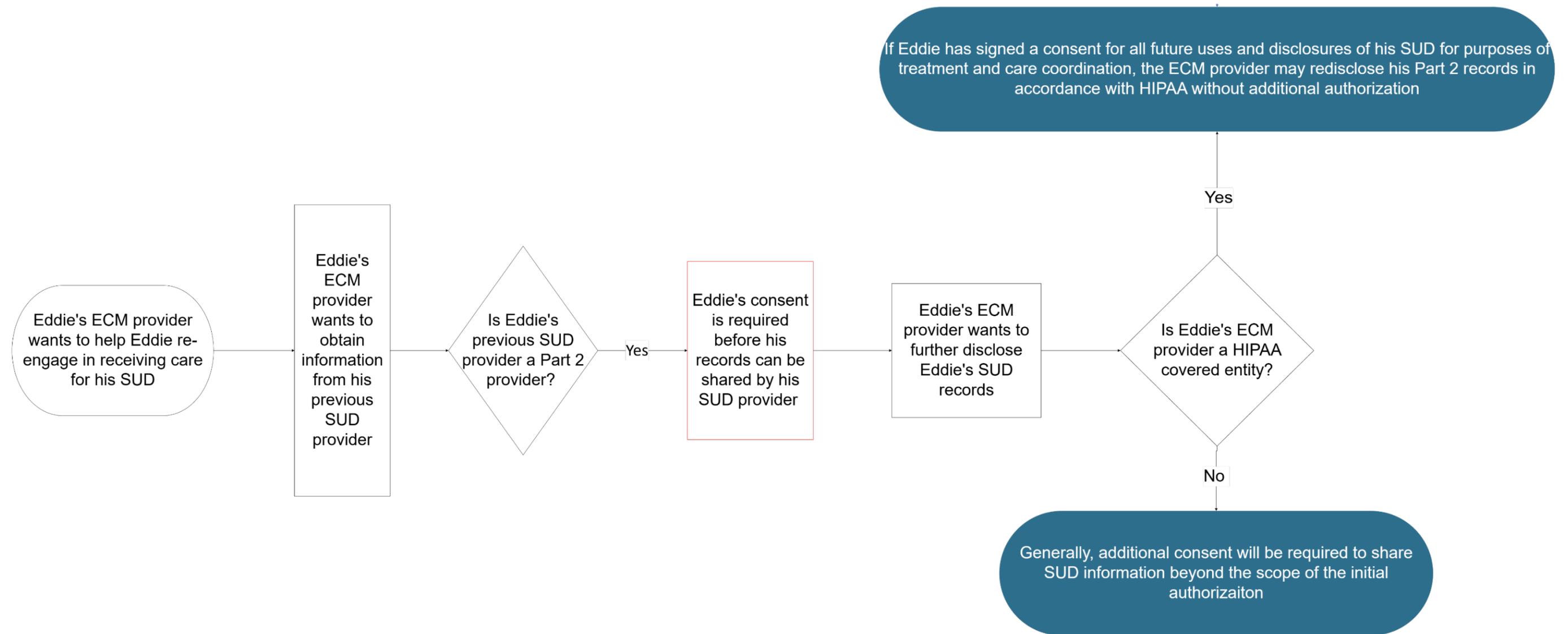
Law/Regulation	Applicable?	Key Questions	Consent to share information needed?
<b>HIPAA</b>	Yes	<ul style="list-style-type: none"> <li>» Is the ECM Provider a covered entity under HIPAA?</li> <li>» Is PHI being disclosed for the purpose of Eddie’s treatment and/or care coordination?</li> </ul>	<p><b>No.</b> HIPAA permits covered entities to disclose PHI for purposes of treatment and healthcare operations (e.g., care coordination) without consent.</p> <p>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, <b>no HIPAA authorization is required.</b></p>
<b>42 C.F.R. Part 2</b>	Yes	<ul style="list-style-type: none"> <li>» Is the SUD Provider a Part 2 provider?</li> </ul>	<p><b>Initial Disclosure: Yes.</b> In the event that Eddie’s SUD provider is a Part 2 provider, Eddie’s <b>consent is required to disclose his SUD records.</b> Please <a href="#">see</a> page 21 for</p>

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Law/Regulation	Applicable?	Key Questions	Consent to share information needed?
			<p>determining when 42 C.F.R. Part 2 applies.</p> <p><b>Note:</b> If Eddie declines to consent to release his SUD records, then his Part 2 provider may <u>not</u> share his SUD records.</p> <p><b>Redisclosure: No.</b> Because the ECM provider receiving SUD records from a Part 2 provider is a covered entity under HIPAA, it <b>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</b> in accordance with HIPAA. Please <a href="#">see</a> page 25 for more information on redisclosure of Part 2 records.</p>
<b>AB 133</b>	Yes	» Is the information being shared for the purposes of delivering services under CalAIM (e.g., Community Supports)?	<b>No.</b> AB 133 permits the sharing of health information among Medi-Cal partners for the purposes of implementing CalAIM without individual authorization, so <b>no consent is required</b> under California state law for these disclosures.

Diagram 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 CoC, which coordinates the delivery of housing services in the county and maintains the 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 provided by Deshawn’s MCP.

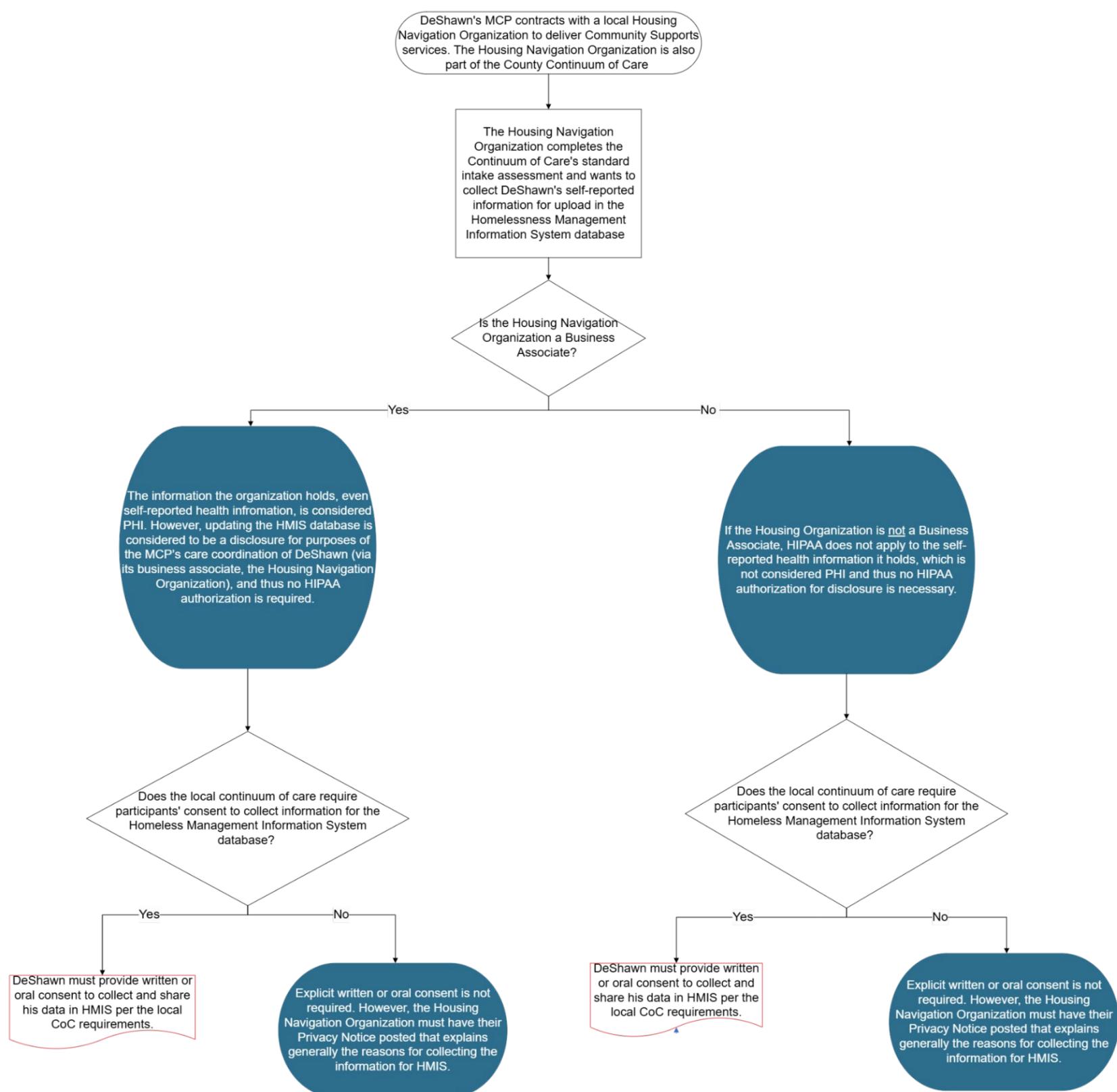
Law/Regulation	Applicable?	Key Questions	Consent to share information needed?
<b>HIPAA</b>	Maybe	» Has the Housing Navigation Organization signed a Business Associate Agreement with the MCP?	<p><b>No.</b></p> <ul style="list-style-type: none"> <li>If the Housing Organization is a Business Associate, because its disclosure to HMIS is for purposes of the MCP’s care coordination, <b>no authorization is necessary.</b></li> <li>If the Housing Organization is not a Business Associate, HIPAA does not apply to the self-reported health information it collects and holds, and thus <b>no HIPAA authorization for disclosure is necessary.</b> For more information on when HMIS data is and is not considered PHI, <a href="#">refer</a> to page 14.</li> </ul>
<b>42 C.F.R. Part 2</b>	No	» Is anyone seeking to	<b>No.</b> In this scenario, the patient’s self-reported SUD

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Law/Regulation	Applicable?	Key Questions	Consent to share information needed?
		obtain or disclose information held by Part 2 provider?	treatment status is not Part 2 protected information, because the Housing Navigation Organization is not a Part 2 provider. As a result, <b>no Part 2 consent is required.</b>
<b>Local CoC HMIS Consent Requirements</b>	Yes	» Does the local CoC require all CoC organizations to have participants fill out a release of information consent to release information form to HMIS to collect and store PPI in the CoC HMIS database?	The HMIS consent requirements <b>depend on the Local CoC's Privacy Notice</b> , which has discretion to require participants to fill out a consent to collect information.
<b>AB 133</b>	Yes	» Is the information being shared for the purposes of delivering services under CalAIM (e.g., Community Supports)?	<b>No.</b> AB 133 permits the sharing of health information among Medi-Cal partners for the purposes of implementing CalAIM without individual authorization, so <b>no consent is required</b> under California state law for these disclosures.

Diagram 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 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.

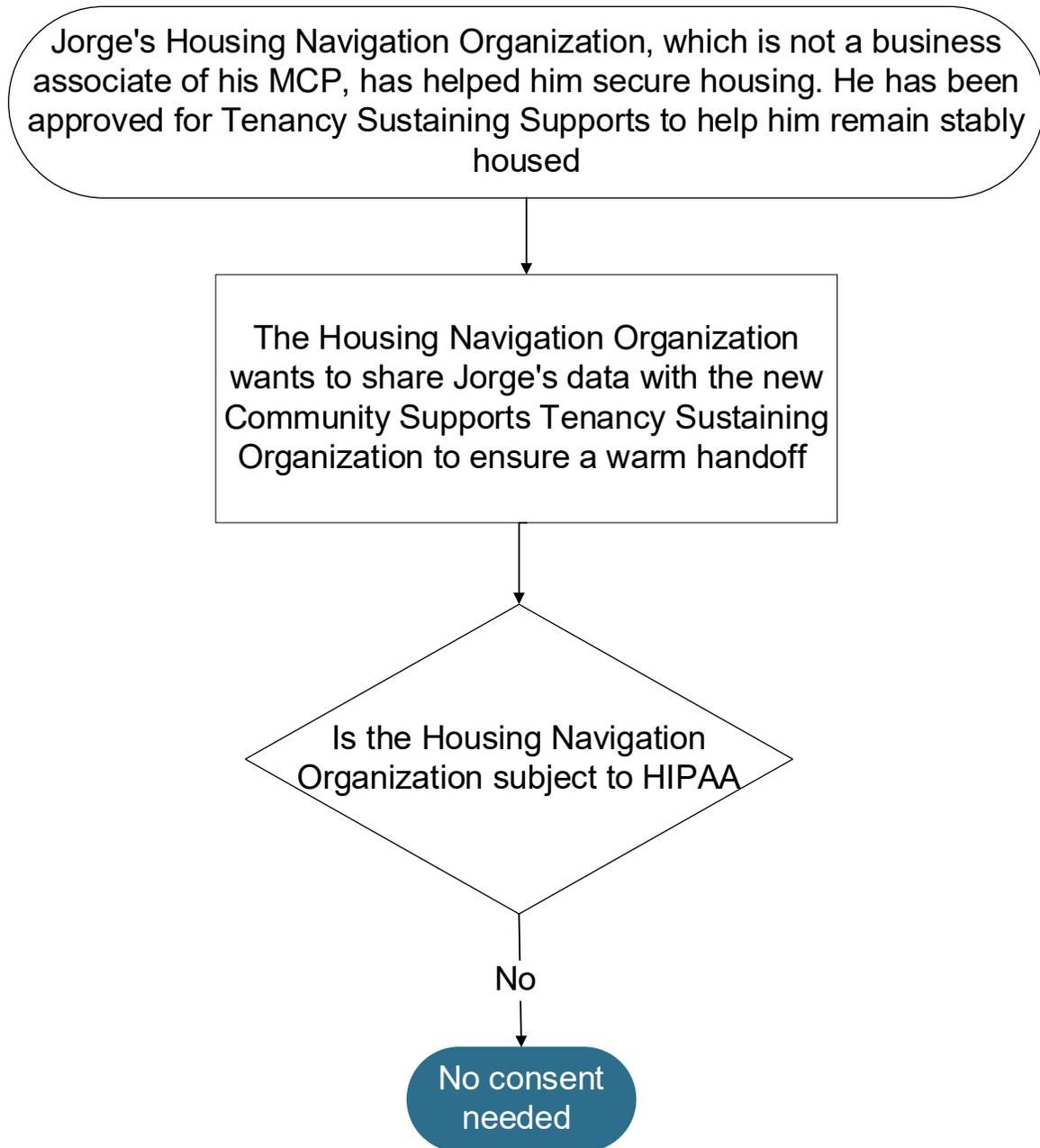
Both Community Supports housing organizations are part of the local CoC. Jorge was presented with the CoC’s HMIS Privacy Notice as part of his intake when first engaged by the Community Supports Housing Navigation Organization. The CoC’s Privacy Notice allows the organization to share necessary personal information collected in HMIS with other CoC housing providers to provide or coordinate services.

Jorge’s prior Services Coordinator at the Housing Navigation Organization wants to ensure a warm hand-off between the organizations and provide information about Jorge to his new organization – the 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?	<b>No.</b> Because the Housing Navigation Organization is neither a covered entity nor a business associate, HIPAA does not apply and the information it is

Law/Regulation	Applicable?	Key Questions	Consent to share information needed?
			disclosing to the Community Supports Tenancy Sustaining Organization is not PHI. As a result, <b>no consent is required.</b>
<b>42 C.F.R. Part 2</b>	No	» Is anyone seeking to obtain or disclose information held by Part 2 provider?	<b>No.</b> 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.
<b>Local CoC HMIS Consent Requirements</b>	Yes	» Does the CoC's HMIS Privacy Notice allow for sharing of personal information with other housing providers without consent?	<b>No.</b> The CoC's HMIS Privacy Notice presented to the individual during intake allows for sharing personal information collected in HMIS with other CoC housing providers to provide or coordinate services, so <b>no additional consent is required.</b>
<b>AB 133</b>	Yes	» Is the information being shared for the purposes of delivering services under CalAIM (e.g., Community Supports)?	<b>No.</b> AB 133 permits the sharing of health information among Medi-Cal partners for the purposes of implementing CalAIM without individual authorization, so <b>no consent is required</b> under California state law for these disclosures.

## Diagram 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.

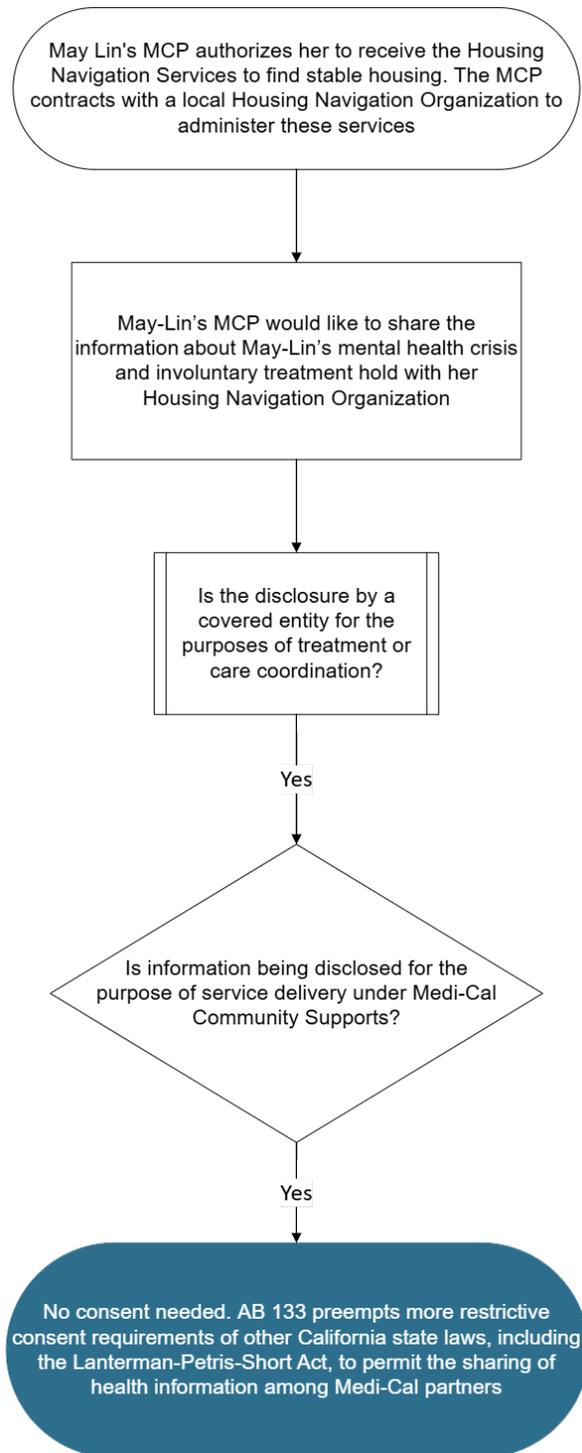
May-Lin's MCP would like to share the information that it has received from her treating provider about May-Lin's mental health crisis and involuntary treatment hold, which is subject to LPS consent protections, with her Housing Navigation Organization.

Law/Regulation	Applicable?	Key Questions	Consent to share information needed?
<b>HIPAA</b>	Yes	<ul style="list-style-type: none"> <li>» Is PHI being disclosed for the purpose of treatment, payment, or care coordination?</li> <li>» Is the MCP a covered entity?</li> <li>» Is the Housing Organization a covered entity or business associate?</li> </ul>	<p><b>No.</b> HIPAA permits disclosures of PHI by covered entities for purposes of treatment and care coordination without authorization.</p> <p>Because the MCP is making the disclosure for purposes of its care coordination of May-Lin, <b>no HIPAA consent is required.</b></p>
<b>42 C.F.R. Part 2</b>	No	<ul style="list-style-type: none"> <li>» Is anyone seeking to obtain or disclose</li> </ul>	<p><b>No.</b> May-Lin's treating mental health providers are not Part 2 providers, so <b>no Part 2 information is involved.</b></p>

Law/Regulation	Applicable?	Key Questions	Consent to share information needed?
		information held by Part 2 provider?	
<b>AB 133</b>	Yes	<ul style="list-style-type: none"> <li>» Is May-Lin's mental health information protected by California's LPS Act?</li> <li>» Does AB 133 override the LPS Act's consent requirements?</li> </ul>	<b>No.</b> Although the LPS Act applies to this disclosure, <b>AB 133 overrides it, meaning no consent is required.</b> <sup>47</sup>

<sup>47</sup> AB 133 permits the sharing of health information among Medi-Cal partners for the purposes of implementing CalAIM without individual authorization. This law overrides more restrictive consent requirements of other California state laws, including LPS Act, to the extent they apply. As a result, no consent is required under California state law for these disclosures.

## Diagram 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<sup>48</sup>
- 2. Designated Support System:** Family members or guardians of the Medi-Cal individual.
- 3. Community Supports:** Services that help address members' health-related social needs, help them live healthier lives, and avoid higher, costlier levels of care. These include:
- 4. Coordinated Entry:** A system-wide process, established by a Continuum of Care (CoC), designed to ensure fair and equitable access to housing and services for individuals experiencing or at risk of homelessness, by quickly identifying, assessing, prioritizing, and referring them to appropriate resources.
- 5. ECM:** 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.<sup>49</sup> ECM services break down the traditional walls of health care, extending beyond hospitals and health care settings into communities are provided to meet the Members where they are.
- 6. 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.
- 7. 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.

<sup>48</sup> 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>

<sup>49</sup> 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>

- 8. 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.<sup>50</sup>
- 9. Housing Navigation Organization:** An entity that helps individuals and families, especially those experiencing or at risk of homelessness, find and maintain safe and stable housing by connecting them with resources and services, and addressing barriers to housing
- 10. Medications for SUD:** These include medications to treat opioid use disorder or medications to treat alcohol use disorder, including the important use of medication as a stand-alone treatment without the prerequisite use of psychosocial services, when clinically indicated.
- 11. 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.<sup>51</sup>
- 12. MCPs:** 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.
- 13. 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.<sup>52</sup>

<sup>50</sup> 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>

<sup>51</sup> 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>

<sup>52</sup> National Institutes of Health, "What Health Information is Protected by the Privacy Rule?" available at [https://privacyruleandresearch.nih.gov/pr\\_07.asp](https://privacyruleandresearch.nih.gov/pr_07.asp)

**14. 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.<sup>53</sup>

**15. Tenancy Sustaining Organization:** Organization that focuses on helping individuals or families maintain or establish stable housing, often by providing services, resources, and support to prevent evictions and ensure long-term tenancy success.

<sup>53</sup> 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](https://www.dhcs.ca.gov/services/Pages/Medi-cal_SMHS.aspx)