

# HIPAA & Business Associates

San Gabriel/Pomona Regional Center

# HIPAA and Business Associates Agenda

1. Brief History of HIPAA
2. What is a Business Associate?
3. What changed and why are we here today?



# Disclaimer

This Training Is **NOT LEGAL ADVICE**

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# Health Insurance Portability and Accountability Act (HIPAA)

HIPAA passed in **1996** and created two sets of rule.

**Privacy Rules** established national standards to identify what health information should be protected and how ***protected health information (PHI)*** can be used and disclosed.

**Security Rules** soon followed to establish national standards to protect ***electronic protected health information (ePHI)***.



# What is a Business Associate (BA)?

- ▶ **Regional Centers qualify as a Business Associate of the DDS**
- ▶ A person or entity that creates, receives, maintains, or transmits PHI and/or electronic PHI on behalf of Contractor.
- ▶ Originally, Business Associates and sub-contractors were not directly subject to compliance obligations and penalties.
- ▶ As a sub-contractor of the Regional Center most of this did not directly apply to vendors through their relationship to the regional center.

# What changed?

- ▶ **Health Information Technology for Economic and Clinical Health Act (HITECH)**
  - ▶ Passed in 2009.
  - ▶ Intended to promote the adoption and meaningful use of health information technology.
- ▶ **HIPAA Omnibus Rules**
  - ▶ Released in 2013
  - ▶ Implemented the changes to HIPAA outlined in HITECH.

**Significantly changed parts of HIPAA in relation to Business Associates.**

# What changed?

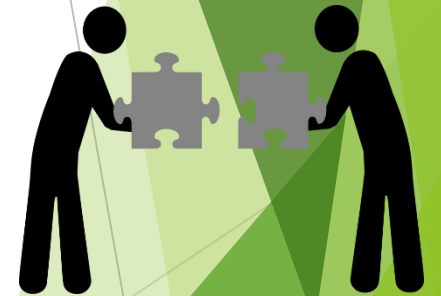
Some of the biggest changes included in the new HIPAA-HITECH Omnibus rules were:

- ▶ Require BA's to comply with the HIPAA Security Rule
- ▶ Require BA's to comply with provisions of the Privacy Rule outlined in their Business Associate Agreement (BAA)
- ▶ **Sub-contractors of a Business Associate who meet the same definitions are now also covered as Business Associates**
- ▶ Created a Breach Notification Standard



# Fast Forward To Today

- ▶ **Contract between Regional Centers and the DDS has been updated effective Fiscal Year 17/18.**
- ▶ It now includes the required Business Associate language between Regional Centers and the DDS.
- ▶ Specifically requires Regional Centers to implement Business Associate Agreements with all sub-contractors (Vendors) who create, maintain, receive, or transmit PHI and/or electronic PHI on behalf of the Regional Center.
- ▶ Includes requirements on Breach Reporting for the Regional Center and all Vendors.



# Where to Start?

- ▶ Policies and Procedures
- ▶ Engage legal counsel or consultants to help
- ▶ Review your existing contracts to determine if you need to establish a Business Agreement yourself (i.e. Email Encryption Services, Cloud Backups, etc).
- ▶ Read the HIPAA Rules (or at least the HHS Summary)

In addition you will need to...



# Designate a Privacy Officer

- ▶ Regional Centers and Vendors must identify a **Privacy Officer** who is responsible for:
  - ▶ Receiving complaints/notices pertaining to breaches, and processing them according to the BAA, HIPAA and State Breach Reporting requirements.
  - ▶ Be the point of contact for communication on privacy matters with the Regional Center and the DDS.
  - ▶ Provide annual training to all employees on how to handle records; and
  - ▶ Keep paperwork including employee name, date and signature for each employee trained that documents the yearly training

# Designate a Security Officer

- ▶ Regional Centers and Vendors must identify a **Security Officer** who is responsible for:
  - ▶ Overseeing the agencies data security program
  - ▶ Carry out the requirements outlined in the BAA and HIPAA Security Rules
  - ▶ Be the point of contact for communication on security matters with the Regional Center and the DDS

This is usually, but not always, an IT person.

**The Privacy Officer and Security Officer may be the same person and/or may be contracted out.**

# Training and Information

- ▶ There is a lot of decent free training out there for yourself and your staff.
- ▶ Training on Privacy and Security is required annually for all staff.
- ▶ **HHS.gov**  
Various training videos, presentation slides and Q&A's on HIPAA topics.
- ▶ **HealthIT.gov**  
Great site. They have a Privacy and Security section specifically focused on providing help and materials to get started with HIPAA.
- ▶ **HIPAAACOW.ORG**  
Site out of Wisconsin that provides a lot of material. Including guides, presentations and training.



# Perform a Risk Analysis

- ▶ A written assessment required for Security Rule compliance.
- ▶ “Conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of electronic protected health information” held by your agency. 45 CFR § 164.308(a)(1)(ii)(A).
- ▶ Should be re-done periodically and when any system containing ePHI changes.
- ▶ You can do this yourself or contract it out.
- ▶ **HealthIT.gov** has a risk assessment tool to help walk you through doing one.

# Encryption

- ▶ Under California Civil Code §1798.82, “encrypted” means:
- ▶ “rendered unusable, unreadable, or indecipherable to an unauthorized person through a security technology or methodology generally accepted in the field of information security.”
- ▶ Recommend using software based on the Federal AES-256 Standard (most are now days).
- ▶ Windows and Mac have built in encryption options.
  - ▶ Bitlocker (Windows)
  - ▶ FileVault (Mac)
- ▶ **Using a Password by itself is NOT encryption!**

[https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CIV&sectionNum=1798.29](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=1798.29)



# What is Personally Identifiable Information (PII)?

- ▶ **Personally Identifiable Information (PII)** is any information about an individual that can be used to distinguish or trace an individual's identity; and any other information that is linked or linkable to an individual.



# What is Protected Health Information?

- ▶ **Protected Health Information (PHI)** is any information in a medical record or designated record set that can be used to identify an individual, and that was created, used, or disclosed in the course of providing a health care service, such as a diagnosis or treatment.

# What is Protected Health Information?

## Examples of some of the HIPAA PHI Identifiers:

- ▶ Electronic mail addresses;
- ▶ Medical record numbers;
- ▶ Health plan beneficiary numbers;
- ▶ Full face photographic images and any comparable images; and
- ▶ Any other **unique identifying number**, characteristic, or code

# Administrative Safeguards

- ▶ **Administrative Safeguards**
- ▶ Administrative actions, and policies and procedures to protect ePHI and to manage the entity's workforce in relation to the protection of that ePHI.
- ▶ **Examples:**
- ▶ Policies and Procedures
  - ▶ Sanction Policy (Required)
  - ▶ Clear Desk Policy
  - ▶ Working with information in the field
- ▶ Risk Analysis
- ▶ Risk Management



# Technical Safeguards

- ▶ **Technical Safeguards**
- ▶ The technology and the policy and procedures for it's use that protect ePHI and control access to it.
- ▶ **Examples:**
- ▶ Policies and Procedures
  - ▶ Password Policy
  - ▶ Data Access
  - ▶ Remote Access
  - ▶ Handling of portable media
- ▶ **Encryption**



# Physical Safeguards

- ▶ **Physical Safeguards**
- ▶ The physical measures, policies, and procedures to protect ePHI and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- ▶ **Examples:**
- ▶ Policies and Procedures
  - ▶ Building Access
  - ▶ Workstation Use/Location  
(i.e. Not facing monitors towards windows, Privacy Screens, etc)
- ▶ **Door Locks**
- ▶ **Alarm Systems**
- ▶ **Data Backups**



# Minimum Necessary Requirement

- ▶ Make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.
- ▶ Evaluate practices and enhance safeguards as needed to limit unnecessary or inappropriate access to and disclosure of protected health information.
- ▶ Does not apply when:
  - ▶ Dealing directly with the individual
  - ▶ The individual has authorized the disclosure
  - ▶ Disclosure to or requests by health care providers for treatment purposes

# Business Associate Agreement

- ▶ SG/PRC has dedicated a webpage on the SG/PRC with regards to the Business Associate Agreement, including the memo to service providers dated 10/27/17, Instructions for completing the BAA and this Powerpoint presentation. This information is located at:

<http://www.sgprc.org/service-providers/business-associate-agreement>

- ▶ The BAA is an electronic pdf document, which can be filled out, signed and submitted electronically.
- ▶ The deadline to complete and submit the BAA is December 31, 2017
- ▶ Service Providers must complete a BAA for each tax identification number, vendedored with SG/PRC (on page 9 of the BAA indicate all the applicable vendor numbers under the tax id for the BAA being completed)
- ▶ Failure to complete the BAA with SG/PRC will result in termination of vendorization
- ▶ If you have any questions, please email us at [commsrvs@sgprc.org](mailto:commsrvs@sgprc.org).



Questions?

