

Public Health

DATA & the Law

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Disclaimer

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Public Health Law Program

■ What we do

- Advance the use of law as a public health tool

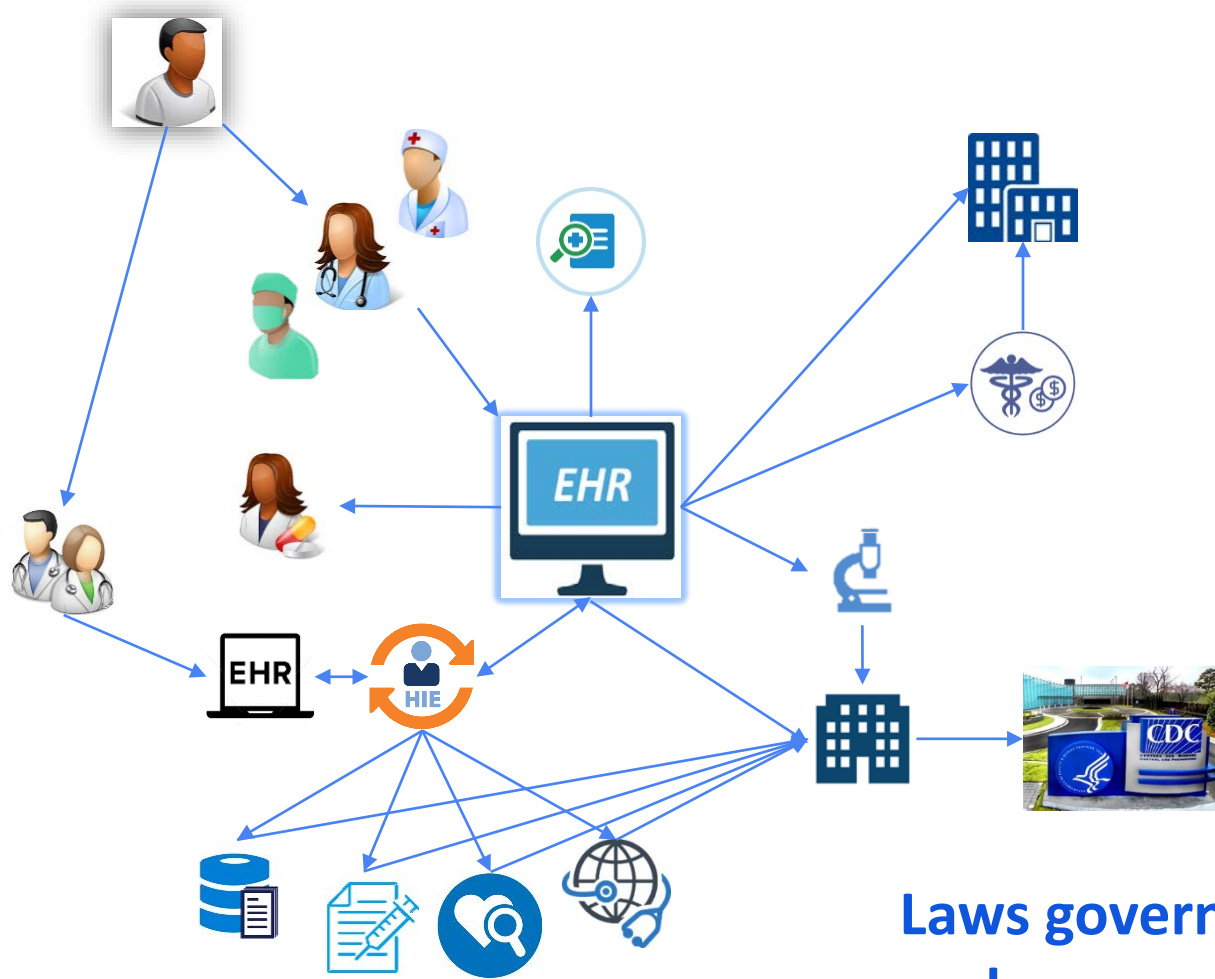
■ How we do it

- Legal epidemiology
- Workforce development
- Outreach and communications
- Tools for understanding and making law and policy decisions

■ Whom we serve

- CDC programs and state, tribal, local, and territorial (STLT) communities
- **You!**



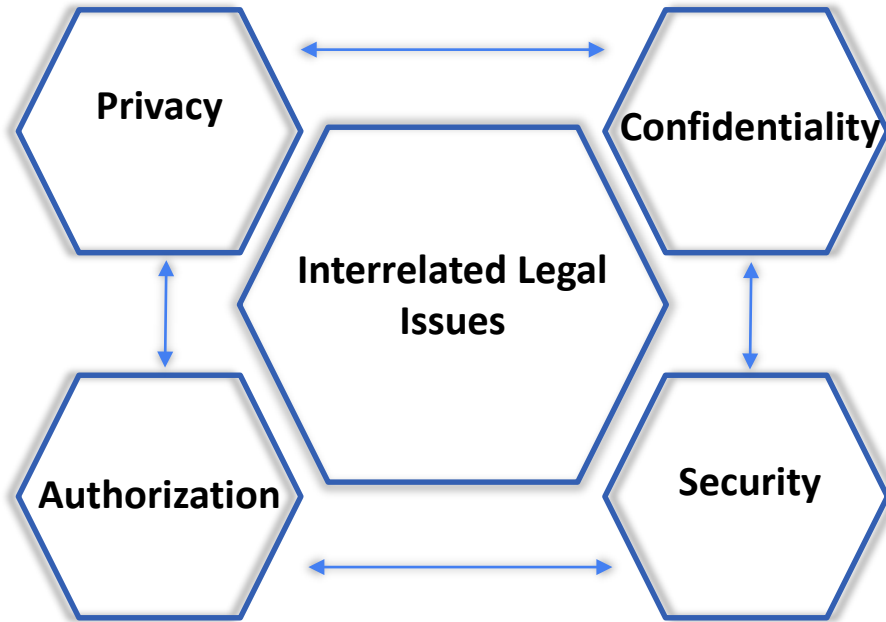


Laws govern every exchange and use!

Privacy, Confidentiality, Security, and Authorization

Untangling the Legal Issues

Untangling the Legal Issues



Different laws shape the issues for each concept

Privacy and Confidentiality

Privacy is a bundle of protections held by the patient or customer

Confidentiality is a duty or responsibility held by a person that receives information

Privacy and confidentiality protections are found in various legal sources:

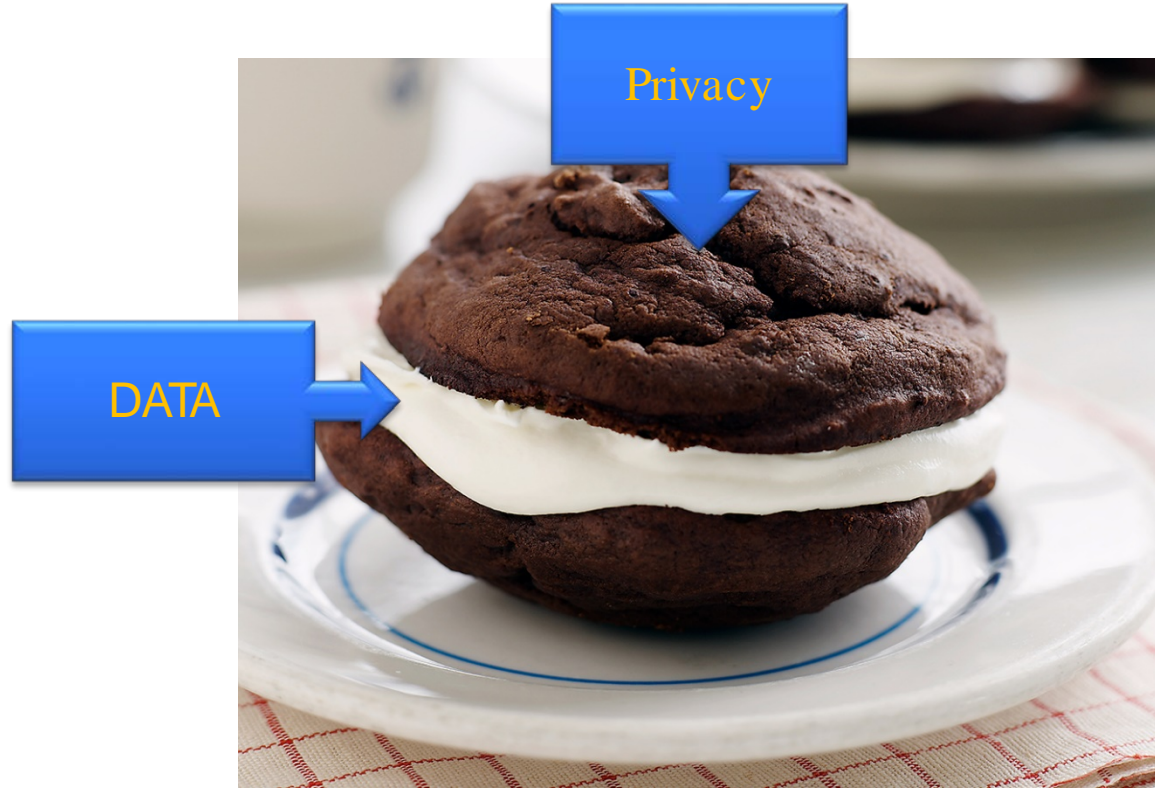
- Constitutions
- Statutes
- Regulations



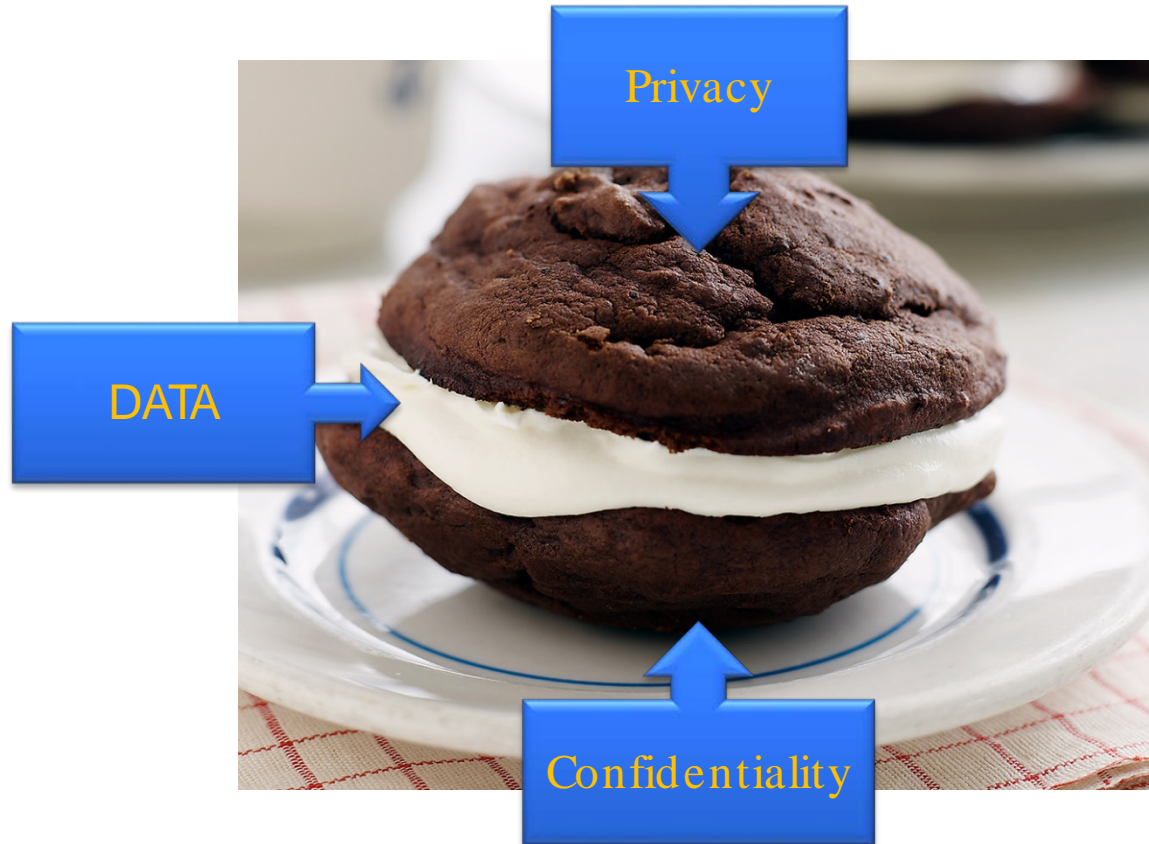
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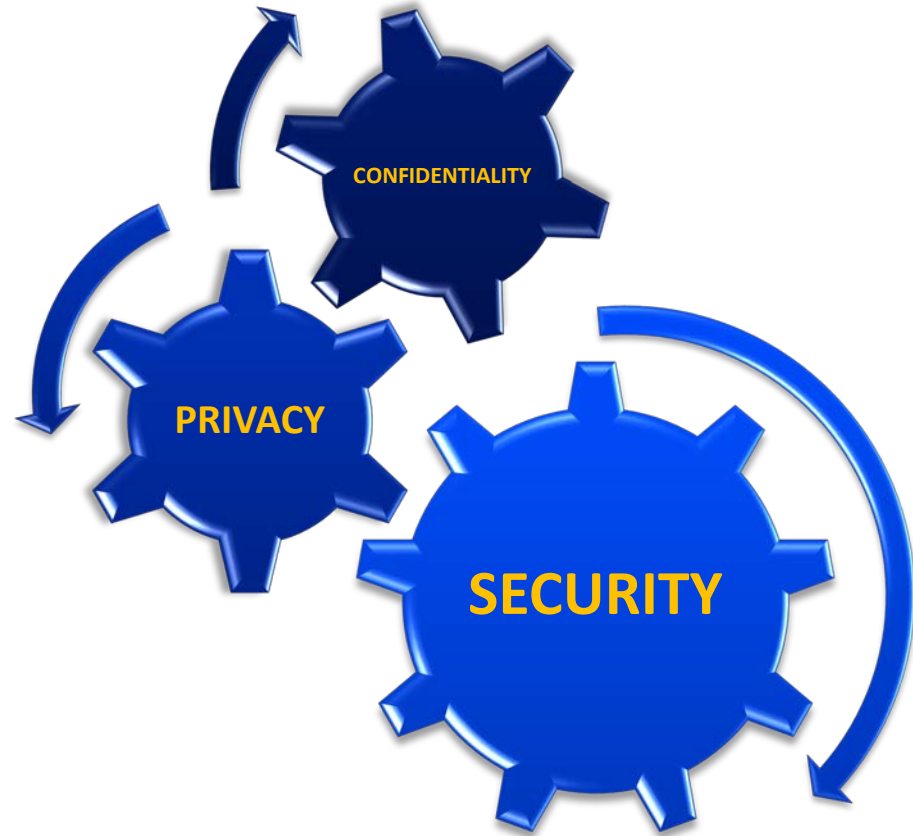
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Security

Privacy is a right
conferred by law

Confidentiality is duty
of a person or entity

Security is a tool



Authorization and Consent

Authorization and
consent are **TOOLS**
like security.

They are **TOOLS** of
use and disclosure
and release.


Sources of Data

Disease Surveillance, Reporting, and the Law

Disease Surveillance

- Ongoing systematic collection, analysis, and interpretation of outcome specific data for use in planning, implementing, and evaluating public health policies and practices
- Uses:
 - Early warning of potential outbreaks and threats to public health
 - Monitor trends of endemic diseases and conditions
 - Progress toward disease and injury control objectives
 - Evaluate the impact of disease and injury prevention and control programs and policies

Disease Reporting



All states and some localities require healthcare providers, hospitals, and laboratories to report suspected or confirmed communicable diseases to the state or local health department.



Diseases considered notifiable are determined by state law.

Examples: State Disease and Conditions Reporting

Specific Diseases

- Tuberculosis
- Zika virus
- West Nile virus
- Influenza, HIV, animal bites

Classes of Diseases

- Viral hemorrhagic fevers
- Arboviruses
- Severe acute respiratory syndromes

Dangerous Disease Catch-Alls

- “Any dangerous, contagious, or infectious disease” S.C. Code Ann. § 44-29-10
- “Cluster of illnesses” N.H. Code Admin. R. He-P301.02
- “Any unexpected pattern of cases, suspected cases, deaths or increased incidence of any other disease of major public health concern, because of the severity of disease or potential for epidemic spread, which may indicate a newly recognized infectious agent, outbreak, epidemic, related public health hazard or act of bioterrorism” Ohio Rev. Code Ann. § 3701-3-02

Examples: Compliance with Reporting

Proper compliance involves correct timing, format, and protections

Format and Timing

South Carolina Code § 44-29-10
(A) In all cases of known or suspected contagious or infectious diseases occurring within this State the attending physician must report these diseases to the county health department within twenty-four hours, stating the name and address of the patient and the nature of the disease.

Protections for Reporters

Montana Code § 50-16-704
(3) A health care facility, a representative of a healthcare facility, a physician, or the designated officer of an emergency services provider's organization may not be held jointly or severally liable for providing the notification required ... when the notification is made in good faith or for failing to provide the notification if good faith attempts to contact an exposed person of exposure are unsuccessful.

Public Health Registries

- Vital statistics – birth, death, marriage, divorce
- Registries used in preventive medicine
- Disease-specific registries
- Treatment registries

National Public Health Surveillance

- CDC's National Notifiable Diseases Surveillance System (NNDSS)
- US Consumer Product Safety Commission's National Electronic Injury Surveillance System
- CDC's Surveillance for Asthma
- CDC's Surveillance for Influenza
- Behavioral Risk Factor Surveillance System (BRFSS)

Uses of Data

State Authority to Investigate and Control Disease Outbreaks

Disease Investigations

All state (and some local) health departments have authority to investigate diseases and potential outbreaks.

“The department shall: ... Make investigations and inquiries as to the causes of disease and especially of epidemics.” Mich. Comp. Laws Ann. § 333.2221

“[The Department of Health] shall have, upon request, full access to the medical records, tumor registries, and other special disease record systems maintained by physicians, hospitals, and other health facilities as necessary to carry out its investigation of these diseases.” S.C. Code Ann. § 44-1-110.

The authority to conduct investigations includes the authority to access medical records.

Disease Control

All state (and some local) health departments have authority to implement disease control measures

Example: 410 Indiana Administrative Code § 1-2.5-79

“A local health officer or the commissioner, upon learning or being notified of communicable diseases . . . shall place such restrictions upon the movements of cases or carriers and their contacts as may be reasonably necessary to prevent the spread of disease.”

Disclosure of Data

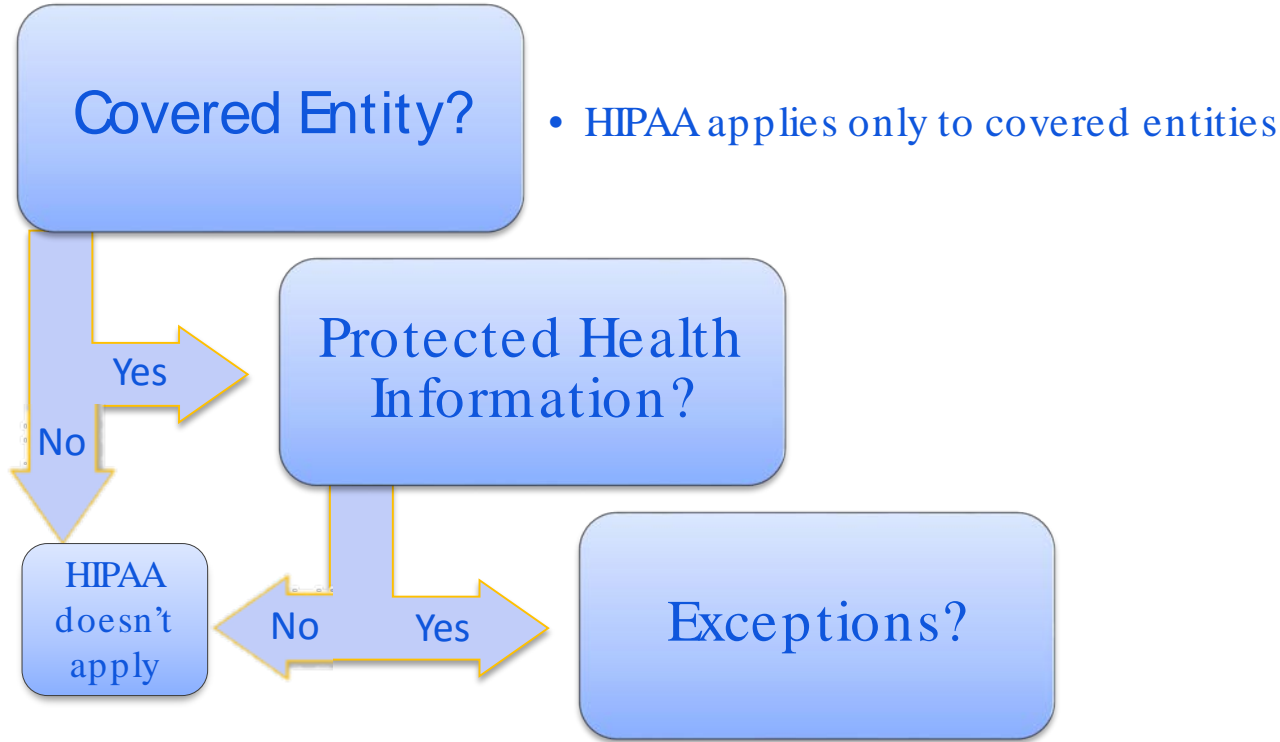
Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule

HIPAA Privacy Rule: The General Rule

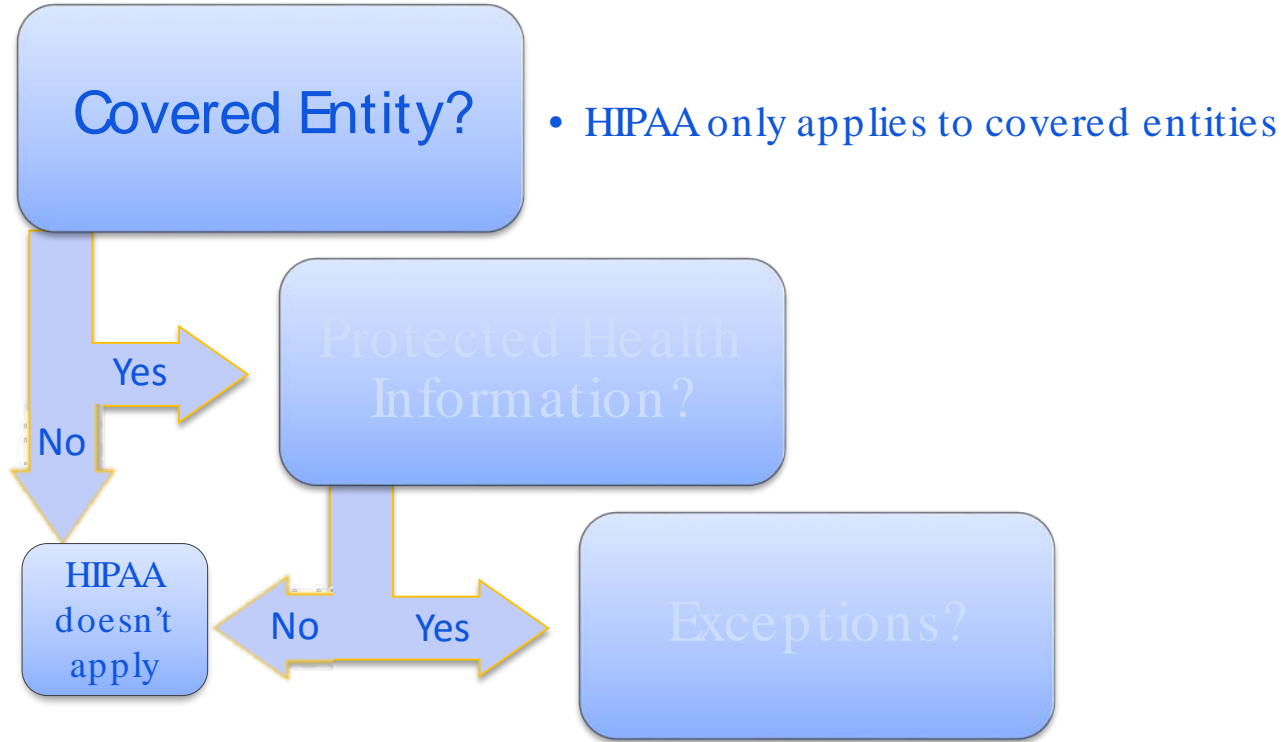
A covered entity can only use or disclose protected health information for limited purposes unless the individual authorizes the use or disclosure

45 C.F.R. § 164.502 et seq.

Basic HIPAA Privacy Rule Flow Chart



Basic HIPAA Privacy Rule Flow Chart



Covered Entities: To whom does HIPAA apply?

Covered Entities

- Healthcare providers “who transmit any health information in electronic form in connection with a transaction”
- Health plans
- Healthcare clearinghouse

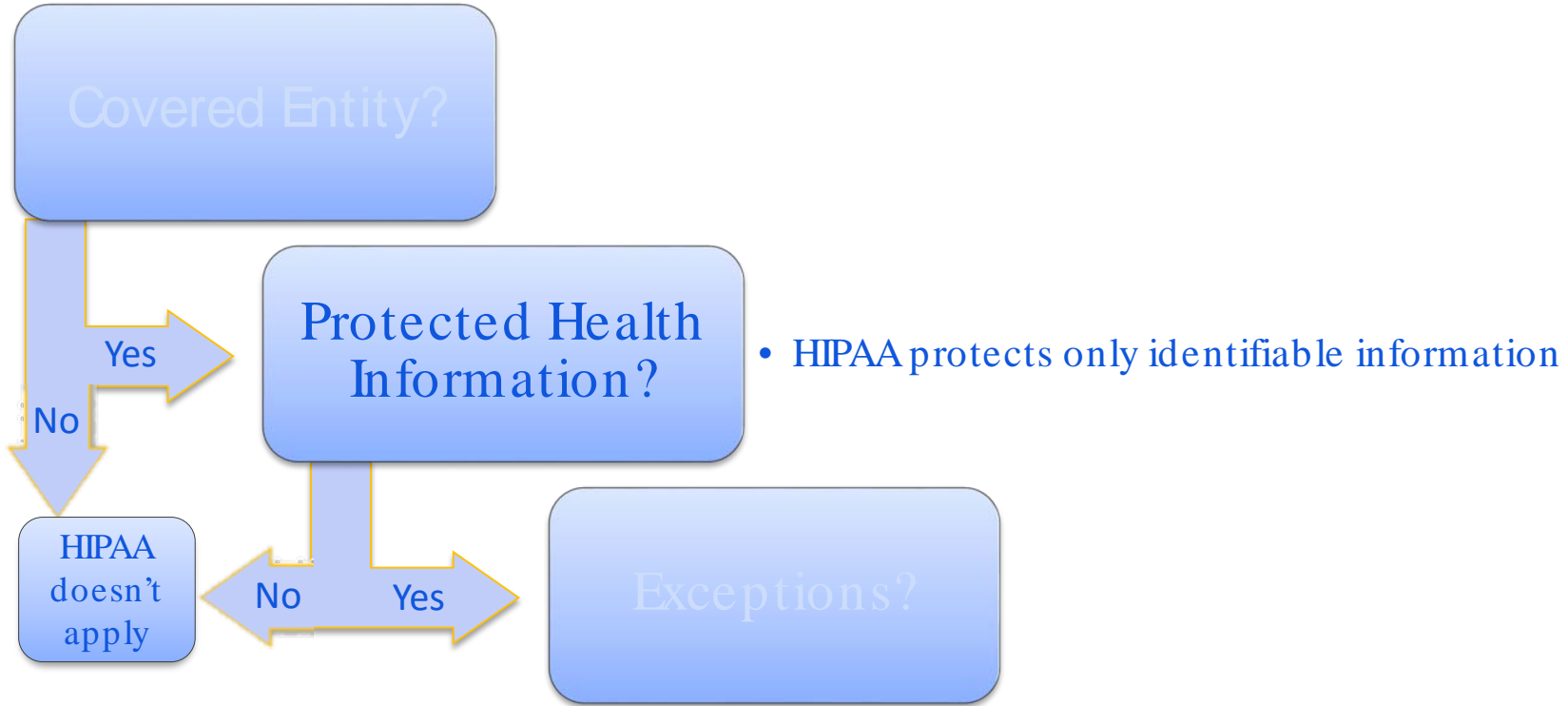
Business Associates

Provide services on behalf of covered entities requiring the disclosure of protected health information

Hybrid Entities

Activities include “covered” and “non-covered” functions

Basic HIPAA Privacy Rule Flow Chart



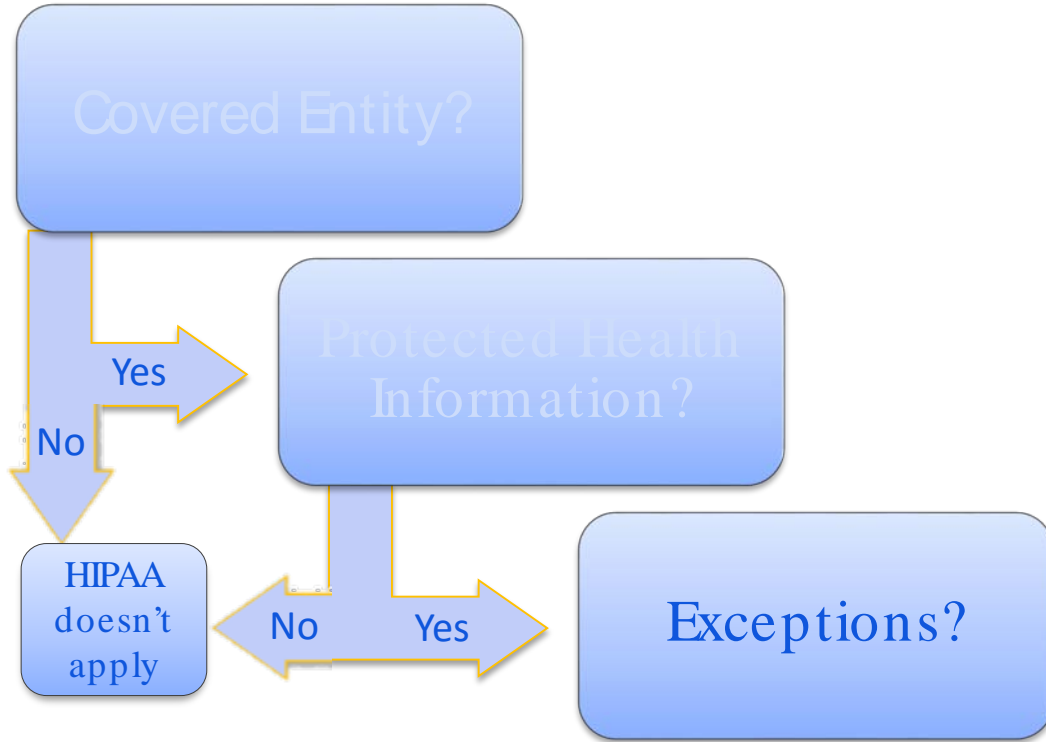
Protected Health Information: What does HIPAA protect?

- Protected health information
 - Individually identifiable health information that is transmitted or maintained by covered entity
- Individually identifiable health information
 - Is created or received by a covered entity
 - Relates to the health of an individual
 - Identifies the individual; or
 - Reasonable to believe information can be used to identify the individual



45 C.F.R. § 160.103

Basic HIPAA Privacy Rule Flow Chart



- Exceptions might still permit disclosure

Exceptions: When may disclosure be permitted?

- To individuals specifically when they request access to their protected health information; and
- To federal US Department of Health and Human Services when it is undertaking a compliance investigation or review or enforcement action.

45 C.F.R. § 164.502(a)(2)

Exceptions: When may disclosure be permitted?

- Treatment
- Public health activities
 - To a public health authority
 - To a person at risk of contracting or spreading a disease or condition
- Disaster response
- Law enforcement
- As required by law
- Limited data sets

HIPAA Public Health Activities Exception

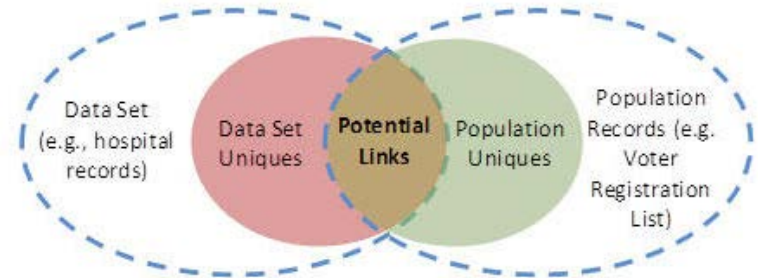
PHI disclosure to a public health authority is allowed:

“for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions” 45 CFR 164.512(b)



De-identified Health Information

- Why de-identify?
 - There are no restrictions on the use or disclosure of de-identified health information
 - e.g., aggregate statistical data or data stripped of individual identifiers
- De-identification methods
 - Expert Determination
 - “Safe Harbor” De-identification
 - Exclude list of 18 identifiers



Data Use Agreements

Data Use Agreements (DUA)

Tools
to:

Obtain access to data

Constrain use of data after disclosure

Constrain additional disclosure

Ensure rights and obligations are maintained

When to Consider a DUA

When you want to disclose data:

- You are concerned about the future use and disclosure of your data or
- You are required by law to enter a DUA to disclose the data

When you anticipate a future need to obtain data quickly:

- You are concerned that unnecessary negotiations might delay necessary response
e.g., public health disclosures for outbreak response

DUAs are not required for every disclosure

Additional Resources

- FERPA and HIPAA
 - US Department of Health and Human Services & US Department of Education’s Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf
 - ASTHO’s Comparison of FERPA and HIPAA Privacy Rule for Accessing Student Health Data www.astho.org/programs/preparedness/public-health-emergency-law/public-health-and-schools-toolkit/comparison-of-ferpa-and-hipaa-privacy-rule/
- FOIA and HIPAA
 - US Department of Health and Human Services. How does the HIPAA Privacy Rule relate to freedom of information state laws? www.hhs.gov/hipaa/for-professionals/faq/506/how-does-the-hipaa-rule-relate-to-freedom-of-information-laws/index.html

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