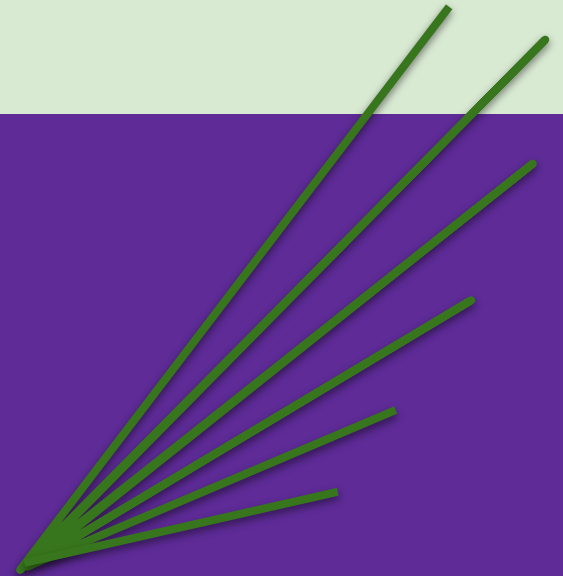


# The (Largely) Unknown HIPAA Provision Used to Expand Care Coordination and Speed Access to Social Services

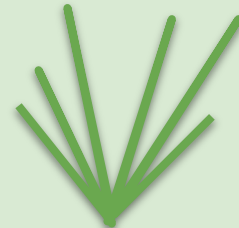
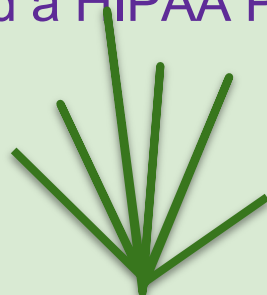
Chris Alibrandi O'Connor, JD  
CAOC Consulting, LLC

Indian Country ECHO Grand Rounds Webinar  
June 18, 2024



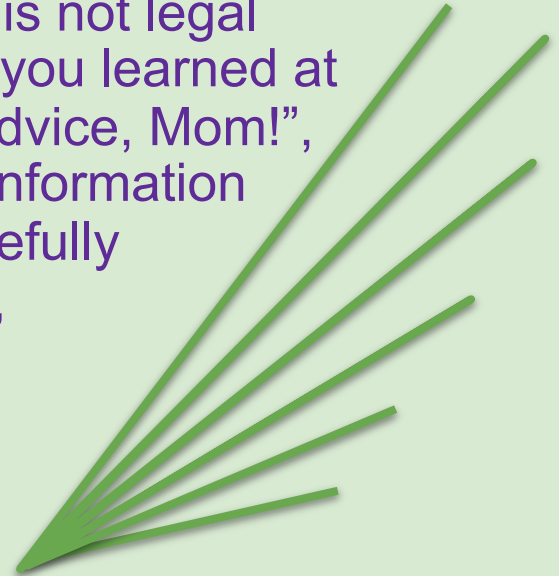
## A little about my work...

- Attorney for 29 years, focused on health data sharing for last 6
- Provide training on HIPAA and 42 CFR Part 2
- Present at NIHB, CSTE, APHA and other national conferences on health data sharing legal topics
- Current work is helping Tribal Epidemiology Centers/Tribes and States “get to ‘yes’” on sharing health data for public health
- Prior to consulting work, was a Deputy Director at the Network for Public Health Law and a HIPAA Privacy Officer



## Not Legal Advice

Nothing offered in this presentation is legal advice, should be treated as legal advice, should be relied upon as legal advice, or even smells like legal advice. When the history of legal advice is written, what you hear today will not appear, as it is not legal advice. When your mother asks you tonight what you learned at work today, the proper answer will be “not legal advice, Mom!”, followed by whatever recounting of the following information you wish to give, which, while instructive and hopefully relevant and helpful to your work, is, nonetheless, not legal advice.





# POLL

What do you fear?

1. A bear with cubs
2. The November presidential election
3. Your teenage daughter's mood swings
4. Violating HIPAA

Select all that apply.



# POLL

Which one category describes your job best?

1. Health care provider
2. Community Health Worker
3. Management
4. Compliance



## **The Problem:**

Not enough resources to coordinate patient care, reach patients for post-visit follow-up, or to provide support to get them to follow-up care.

## **The Question:**

Does HIPAA allow a HIPAA covered entity to share Protected Health Information with community-based organizations to address social service needs and/or support clinical follow-up?

# Health privacy laws are designed to balance



the sharing of  
health information

*with*

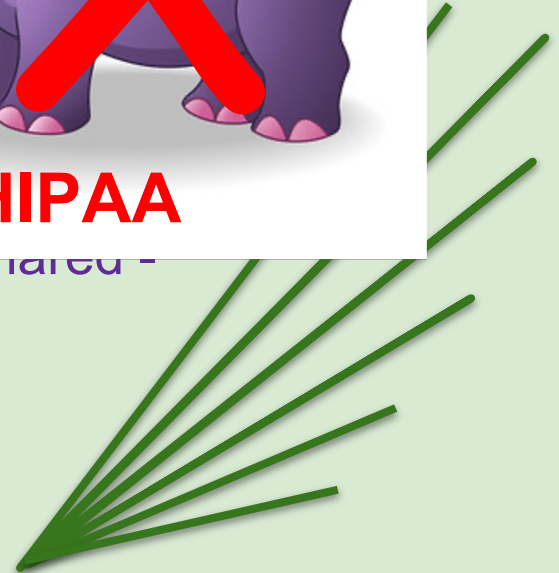
protecting the privacy  
of the person whose  
health information it is

# HIPAA Big Picture

- Health Information Portability and Accountability Act
- Federal law with 2 primary goals
- HIPAA Privacy Rule regulates how protected health information (PHI) can be shared - with and without our express authorization



**HIPAA**





You are a HIPAA “**Covered Entity**” if you are a:

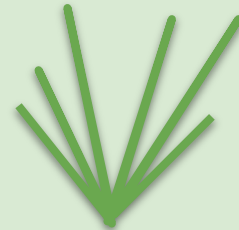
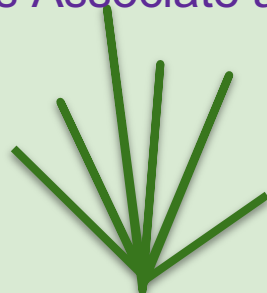
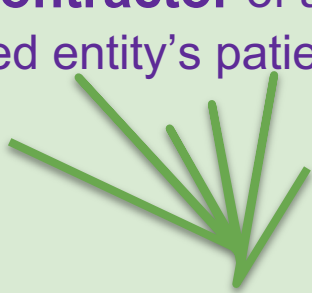
- Health care provider
- Health (insurance) plan\*
- Health care clearinghouse (ex., health information exchange)

*Or*

**Business Associate** of a covered entity providing a service that handles the covered entity’s patients’ Protected Health Information

*Or*

**Subcontractor** of a Business Associate and you also handle the covered entity’s patients’ PHI

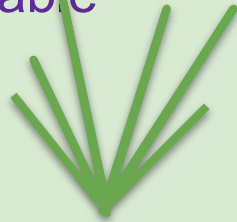


# What is Protected Health Information?

"Individually identifiable health information" is information, including demographic data, **that relates to:**

- the individual's past, present or future physical or mental health or condition,
- the provision of health care to the individual, or
- the past, present, or future payment for the provision of health care to the individual,

and **that identifies the individual** or for which there is a reasonable basis to believe it can be used to identify the individual.



## HIPAA IDENTIFIERS:<sup>\*</sup>

Name

Address

Birthdate, admission date,  
discharge date, date of death,  
and exact age if over 89

Telephone numbers

Fax number

Email address

Social Security Number

Medical record number

Health plan beneficiary number

Account number

Certificate or license number

Vehicle identifiers

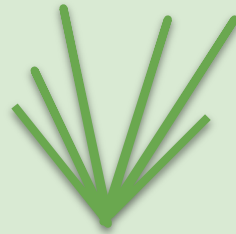
Device identifiers Web URL

Internet Protocol (IP) Address

Finger or voice print

Photographic image

Any other characteristic that could  
uniquely identify the individual



<sup>\*</sup>abbreviated

# HIPAA Privacy Rule

**General requirement: Patient's consent needed before his/her/their PHI can be used or shared by HIPAA covered entities**

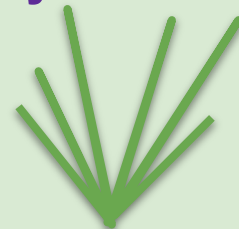
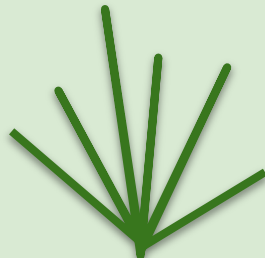
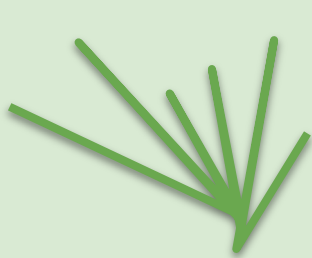
## **Exceptions:**

- **For treatment, payment, or operations**
- **For public health activities**



## Treatment means

- **consultation between health care providers** relating to a patient,
- the **referral of a patient** for health care from one health care provider to another, or
- the provision, coordination, or management of health care and related services by one or more health care providers, including the **coordination or management of health care by a health care provider with a third party.**



## **See? OCR really means it!**

Proposed amendment to HIPAA to reinforce:

A covered entity may disclose an individual's PHI to

- **a social services agency**
- **community-based organization**
- **home and community-based services provider, or**
- **similar third party**

that provides health or human services to specific individuals for individual-level care coordination and case management activities.





## Examples of care management and coordination

A provider calls a social service agency to locate housing for a patient, who is currently homeless and has meds he needs to keep refrigerated.

To help a diabetic patient maintain healthy blood sugar levels, a provider contacts the local food bank

A provider asks a community health worker to locate a pregnant patient who cannot be contacted by phone and needs treatment for recently diagnosed case of syphilis.

## How much PHI can be shared with the third party?

“Minimum Necessary” standard - limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request

### *WHAT* PHI can be shared?

- HIPAA doesn't limit the type of PHI to be shared, except for psychotherapy notes
- State law or other federal law may, though, like “Part 2”







## 42 CFR Part 2 (“Part 2”)

### **Applies to:**

An individual or entity that holds itself out as providing SUD treatment, diagnosis or referral (also applies to an identified unit in a general medical care facility that provides those services)

or

Medical personnel or staff in a general medical facility whose primary function is the provision of such services and who are identified as SUD providers;

### **AND**

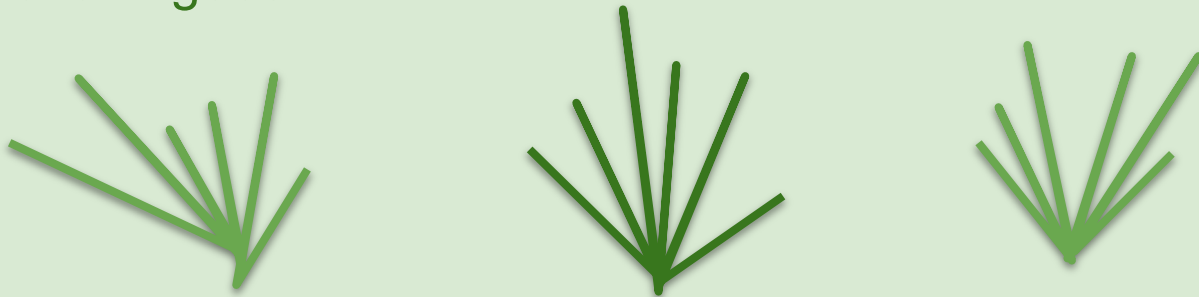
that is federally “assisted”, e.g., receive federal funds or were granted tax-exempt, non-profit status by the IRS.

# What information is covered by Part 2?

## Information, whether recorded or not, that:

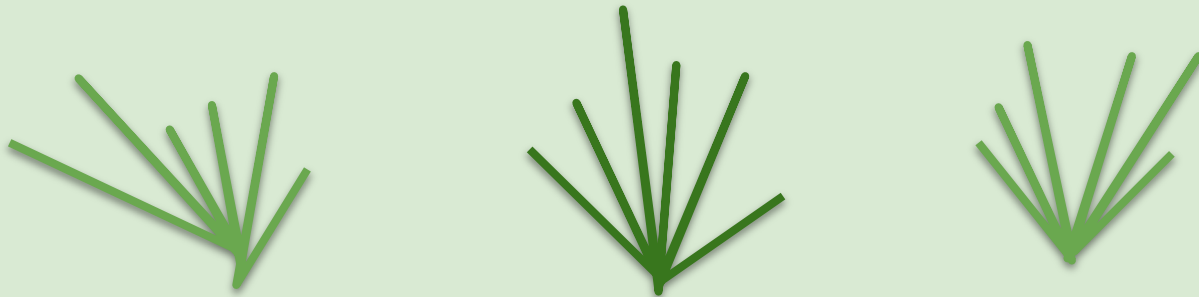
- Would identify a patient as an SUD patient, either directly or indirectly
- Was created, received, or acquired by a Part 2 Program for the purpose of treating alcohol or drug misuse, making a diagnosis for treatment, or making a referral for that treatment.

Note: generally, the Part 2 protections travel with the information wherever it goes.



## Unlike HIPAA, under Part 2

consent is needed to share PHI for treatment, payment and health care operations





## Documentation of disclosures

With some exceptions, for each disclosure you need:

- (i) The date of the disclosure;
- (ii) The name of the entity or person who received the protected health information and, if known, the address of such entity or person;
- (iii) A brief description of the protected health information disclosed; and
- (iv) A brief statement of the purpose of the disclosure



# Q & A

