

HIPAA and AB 210: Questions & Answers

Q1: Does AB 210 supersede the Health Insurance Portability and Accountability Act of 1997 (HIPAA)?

A1: No. AB 210 does not supersede any federal laws, including HIPAA. Agencies participating in AB 210 information sharing must abide by all federal laws that are applicable to them.

Q2: Under AB 210, can a HIPAA covered entity share Protected Health Information (PHI) with a non-HIPAA covered entity that is not a business associate of the covered entity?

A2: Since AB 210 does not supersede HIPAA, AB 210 does not have any bearing on whether HIPAA covered entities (“covered entities”) can share PHI with non-HIPAA covered entities. However, under HIPAA, covered entities are permitted to disclose PHI for treatment purposes without having to obtain the authorization of the individual. This is sometimes referred to as “the treatment exception.” Treatment includes the coordination or management of health care by a health care provider with a third party. Health care means care, services, or supplies related to the health of an individual.

Q3: Does the HIPAA treatment exception apply in cases where a covered entity would like to share PHI with a non-HIPAA covered entity that is a social service provider, such as a homeless services provider?

A3: A covered entity is permitted to disclose PHI for treatment purposes to any health care provider, including those that are not covered by HIPAA. In addition, HIPAA permits a covered health care provider to disclose PHI for the treatment of an individual to a third party, such as a homeless services provider, that is involved in the coordination or management of health care of that individual. If the covered entity believes that disclosing PHI to a social service/homeless services provider is a necessary component of the individual’s health care or may help to further the individual’s health care, the covered entity may disclose the minimum necessary PHI to the social service/homeless services provider. The covered entity would not be required to obtain the authorization the individual.

For example, if a covered entity believes that a patient’s health would benefit from placement in permanent supportive housing (PSH), the covered entity may disclose PHI about the individual to a homeless services provider if the homeless services provider needs that PHI in order to effectively place the individual in PSH.

Q4: Under AB 210, if a covered entity discloses PHI to a non-HIPAA covered entity that is an AB 210 participating agency under “the treatment exception,” can that non-HIPAA covered entity then share the PHI with another AB 210 participating agency?

Yes, if the non-HIPAA covered entity abides by applicable privacy laws.

If the non-HIPAA covered entity is a business associate of the participating agency, then the non-HIPAA covered entity needs to abide by the terms of the business associate agreement with the participating agency, including terms related to re-disclosures of PHI.

If the non-HIPAA covered entity is not a business associate of the participating agency, then the entity is not subject to HIPAA regulations, since those regulations only apply to covered entities and business associates. However, the entity would still be responsible for complying with other applicable privacy laws, including AB 210. Under AB 210, the non-HIPAA covered entity may be allowed to disclose PHI to another non-HIPAA covered entity if the non-HIPAA covered entity believes that the PHI in question is generally relevant to the identification, assessment, and linkage of homeless adults and families to housing and supportive services, and as long as both non-HIPAA covered agencies are AB 210 participating agencies and the personnel involved have completed the AB 210 training and signed the employee participation and confidentiality form.

For example, if the homeless services provider referenced in A3 above believes that sharing its homeless client's PHI with an Intensive Case Management Services (ICMS) provider that is to serve the client would be relevant to linking the homeless client to supportive services, under AB 210, the homeless services provider may be authorized to share that information with the ICMS provider if the ICMS provider is an AB 210 participating agency and any personnel involved have completed training and signed confidentiality forms as required. However, the homeless service provider would be prohibited from disclosing the PHI to the ICMS provider if the ICMS provider were not an AB 210 participating agency.

It is the responsibility of the non-HIPAA covered entity to ensure that all disclosures comply with applicable federal privacy and security requirements. Additionally, any disclosures not covered by AB 210 remain subject to all applicable State privacy and security requirements.

For additional HIPAA guidance regarding sharing PHI for treatment related purposes, see: <https://www.hhs.gov/hipaa/for-professionals/faq/3008/does-hipaa-permit-health-care-providers-share-phi-individual-mental-illness-third-party-not-health-care-provider-continuity-care-purposes/index.html>.

This document was prepared by the County of Los Angeles Homeless Initiative for informational purposes only and is not intended to be interpreted or relied upon as legal advice. You should contact your legal counsel to obtain advice with respect to any particular issue or problem related to HIPAA and its application to you and/or your agency.