



Appendix 2: State Data Use Agreement Example (Louisiana)

Introduction

Data sharing is a critical component of many payment and delivery system reform efforts, particularly for those targeting Medicaid Beneficiaries with Complex Care Needs and High Costs (BCNs). To help states pursuing inter-agency data use, the Centers for Medicare & Medicaid Services (CMS) Medicaid Innovation Accelerator Program (IAP) created a resource brief (housed on the [IAP Improving Care for Medicaid Beneficiaries with Complex Care Needs and High Costs webpage](#)) on Data Privacy, Data Use and Data Use Agreements. The brief highlights some of the challenges faced by states as well as several resources that states participating in the IAP BCN program area found useful in developing DUAs. These resources include state DUA examples, such as the one featured here from Louisiana. States embarking on inter-agency data use can leverage these tools as they pursue data sharing as part of their Medicaid delivery system reform efforts.

**DATA SHARING AGREEMENT LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS
(DHH), BUREAU OF HEALTH SERVICES FINANCING (BHSF), AND OFFICE OF PUBLIC HEALTH
(OPH), AND OFFICE OF BEHAVIORAL HEALTH (OBH)**

I) PURPOSE

The Department of Health and Hospitals (DHH), through the Bureau of Health Services Financing (BHSF), the Office of Public Health (OPH), and the Office of Behavioral Health (OBH) will exchange Medicaid claims and eligibility data, public health data and statistics, alcohol and drug treatment records, and behavioral health claims and behavioral health Medicaid population statistics. This exchange of information will assist in the administration and evaluation of Louisiana Medicaid, public health, and behavioral health services. The data will only be used for program planning, implementation, administration, research, and analytical purposes and will not be used to determine eligibility. This agreement will define and permit the reporting exchange among BHSF, OPH, and OBH to address the provision of personal health services, as well as other core public health functions.

II) DEFINITIONS

Definition of terms:

- A. "Center for Vital Records and Statistics" refers to that section which codes, tabulates, analyzes, reports, and coordinates vital records and other health status indicators data for OPH.
- B. "Consumer" means any individual receiving health services through any program in BHSF, OPH, or OBH that is supported by state or federal resources.
- C. "Health services" are defined as those services that include promotion and prevention activities which improve the general well-being of the consumer.
- D. "Vital Records," "certificates," or "forms" means paper or electronic reports of birth, death, fetal death, marriage, divorce, dissolution of marriage, or annulment, and data related thereto.
- E. "Data Stewards" are those employees who manage the sourcing, use and maintenance of data assets in a program office.
- F. "Business Associate" is an identified person or entity, other than a member of the workforce of a covered entity, who performs functions or activities on behalf of, or provides certain services to, a covered entity that involve access by the business associate to protected health information.

III) JUSTIFICATION FOR ACCESS

A. Federal Requirements

Section 1902 (a) (7) of the Social Security Act (as amended) provides for safeguards which restrict the use or disclosure of information concerning Medicaid applicants and recipients to purposes directly connected with the administration of the Title XIX Medicaid State Plan. 42 CFR 431.302 specifies the purposes directly related to Medicaid State Plan administration. These include: (a) establishing eligibility, (b) determining the amount of medical assistance, (c) providing services for recipients, and (d) conducting or assisting an investigation, prosecution, or civil or criminal

proceeding related to the administration of the plan. Since Medicaid operates a managed care structure as health plans, they are covered entities by HIPAA. 45 CFR 164.506 permits the disclosure or use of protected health information for treatment, payment, and operations of health care activities.

Managed care structures affect how public health agencies carry out their community-wide public health responsibilities. Data sharing amongst agencies provides the opportunity to study changes in health, utilization, and costs within Louisiana's significant Medicaid population. These linkages involve efforts to enroll, provide, and coordinate care among Louisiana's most vulnerable citizens.

B. State Requirements

Protocols and procedures developed under this agreement will be consistent with the parties' implementation of requirements associated with state statutes, including but not limited to R.S. 46:56 and R.S. 40:41 et seq.

IV) BENEFITS TO BHSF

Open reporting to Medicaid will refer consumers to Medicaid and other programs for inpatient care and other benefits not provided by separate, state programs. This relationship will facilitate improved coordination of state programs for uninsured adults and children and populations with special health care needs. Furthermore, OPH, operating as a Medicaid provider, will also provide laboratory information on consumers who receive services. This collaboration will also contribute to the coordination of care and quality improvement efforts. Moreover, this will enable early detection of pregnancy amongst Medicaid-eligible mothers. Finally, this agreement will – on a per member, per month basis – help facilitate expeditious updating of Medicaid membership rolls (in the event of death or fetal death) so that no unnecessary payments are made to or by managed care organizations.

One challenge BHSF faces with providing substance use disorder (SUD) services is that they are typically funded and provided across multiple funding streams rather than being financed exclusively by Medicaid. As a result, analyzing data relating to SUD disorders requires data linkages. BHSF and its recipients will benefit from linking OBH data to Medicaid administrative claims and encounters by enabling the agency to better measure service utilization, costs, and provider network access. BHSF's goals for improving Medicaid delivery of SUD services include implementation of new payment strategies and improvements to care transitions for Medicaid recipients with SUD co-morbidities. The ultimate benefit will be lower costs and improved health outcomes.

V) BENEFITS TO OPH

Medicaid data and behavioral health data are essential to OPH for population-based services and targeted interventions including planning, programming, policy-making/analysis, and community

engagement. This agreement will help to simplify sharing of timely, relevant, and high-quality Medicaid data needed for population-based planning and to prevent disease and injury, especially within vulnerable populations such as newborn infants, women, children and individuals with chronic conditions, physical and emotional disabilities, and communicable diseases. Understanding substance abuse and mental health treatment is integral to providing appropriate care at clinics operated by OPH and for understanding the full picture of health statistics for the population of Louisiana. Medicaid will provide claims (inclusive of Medicaid ID number, specific codes related to procedures, diagnoses, pharmacy, and costs), eligibility (income, % FPL, type of Medicaid plan and utilization statistics on clients who receive services to inform and guide OPH public health interventions and augment statistics services; and identify emerging needs in the areas of environmental health, emergency preparedness, and targeted prevention efforts for program areas such as HIV/STD, Bureau of Family Health (Maternal Child Health and Family Planning), WIC, Genetic Disease, Oral Health, and Chronic Disease. OBH will provide electronic health record data for linkage with other primary care sources within OPH.

OPH makes frequent requests for data to help determine the prevalence, morbidity, costs, health care access, and economic burden related to chronic and communicable diseases and other health risk factors in Louisiana. OBH and Medicaid data and information help OPH's workforce to advance operations and inform program and managerial decisions regarding performance improvement, program evaluation and analysis, health outcome assessment, parish health unit administration and clinical services, population demographics, quality assurance, utilization and demand, and cost-effectiveness.

VI) BENEFITS TO OBH

Medicaid encounter data will allow OBH to identify persons who received services funded by Medicaid or are counted as Medicaid waivers with mental illness, addictive disorders, or co-occurring mental health and addictive disorders served. Medicaid MARS Data Warehouse includes claims, eligibility, provider, and reference information which will help OBH's workforce ensure accurate and complete encounter reporting and also will be required for use in quality management and performance accountability for encounter-related projects. Data will be obtained from the MARS data warehouse for performance measures which include Healthcare Effectiveness Data and Information Set (HEDIS) measures, Agency for Healthcare Research and Quality (AHRQ) measures and other measures as defined by DHH-OBH.

Moving toward integrated care requires OBH to crosswalk behavioral health data with public health data to develop a holistic picture of the patients under the care of our Statewide Management Organization (SMO). By sharing data with OPH, OBH and/or OPH can perform data analyses to understand the prevalence of disease conditions (STDs, for example) amongst patients in our partnership. In addition, OBH access to LaHIDD (the state inpatient database) data assists OBH in identifying Medicaid utilization in conjunction with principal diagnosis. With the OBH goal of lowering readmission rates, information from LaHIDD can help the agency target super-utilizer behavioral health populations. OBH can also utilize the Behavioral Risk Factor Surveillance System (BRFSS) which is a chronic disease survey that would foster a better

understanding of the health and habits of OBH recipients. OBH anticipates using the Louisiana Early Event Detection System (LEEDS) data for behavioral health surveillance. Newborn screenings and birth records will assist OBH in targeting interventions aimed at the early detection and treatment of pregnant women with Substance Use Disorder (SUD). OBH will analyze the data on the newborn to measure the health outcomes of those receiving and those not receiving SUD treatment during pregnancy.

VII) MUTUAL BENEFITS

There are mutual benefits to both organizations including but not limited to: development of State-level, integrated information systems to support the evolving role of State government in assuring appropriate, accessible, cost-effective care for vulnerable populations; improvement of Louisiana's technical capacity to analyze data from multiple sources to support policy decision making and program monitoring; development and implementation of common performance measures across multiple programs to improve their effectiveness; and utilization of Medicaid encounter data to assist in public health and behavioral health surveillance, thereby ensuring appropriate care for the Medicaid population.

VIII) DESCRIPTION OF DATA

The LMMIS MARS Data Warehouse (MDW) is a client/server computing platform developed to house a minimum of five full fiscal years (state and federal) of LMMIS claims, eligibility, provider, and reference information. The purpose of the MDW is to provide an independent, isolated computing platform that will be used to generate CMS and State MARS reports. It also supports the data mining efforts required by DHH to manage the Medicaid program. Ultimately, the MDW will enable DHH to establish a solid foundation for fiscal and program trend analyses. The MDW is a relational database system carrying information related to the Medicaid claims processed for the period of January 1995 through the last full month. New eligibility and provider data is loaded into the MDW on a monthly basis, while new claims data is loaded weekly. The claims tables are appended each Sunday to the existing claims data tables. Generally, by the first or second weekend of every month, eligibility and provider tables are loaded with a complete refresh of data. The data for the weekly load of claims is downloaded from the Mainframe via several extract programs that run weekly on Sunday. The data for the monthly load is downloaded from the Mainframe via several extract programs that run after the last check write for the month.

OPH has multiple data information systems that contain consumer information vital to OPH programs, such as: maternal child health planning, family planning, chronic and infectious disease tracking and prevention, referral for medical treatment not provided by OPH, environmental health, and emergency preparedness and syndromic surveillance; immunizations; laboratory information management system. Other systems include the Metabolic Screening Database System for Newborn Screening; Various maternal/child systems, Maternal, Infant and Early Childhood Home Visiting Data System, Healthy Homes & Lead Poisoning Prevention Database, Bureau of EMS Portal (licensure, education, and training data); sanitarian software for permitting and inspections of food, restaurants and other commercial ventures requiring permits,

Environmental Public Health Tracking Program Network which is a web-based, user-defined query portal with statistics on pesticide exposure, occupational health/adult blood lead poisoning, indoor air quality; other program information such as asthma, carbon monoxide poisonings, heat stress, heart attacks, water and air quality, birth outcomes, birth defects, cancer, and childhood lead poisonings. OPH conducts the annual phone survey known as Behavioral Risk Factor Surveillance System (BRFSS) that collects data on various behaviors related to health that residents employ. Many of these databases have a clear overlap with Medicaid-eligible clients.

OPH can also provide encounter data on services offered in the Parish Health Units, much of these services being provided for Medicaid-eligible citizens.

OPH expects to begin implementing electronic health records (EHR) in all parish health units in the 2014 fiscal year. The EHR will include clinical management system, practice management software system and insurance eligibility verification capabilities and billing for public and private insurance plans, including the Bayou Health and Medicaid umbrellas.

OBH data sets include data submitted by the Statewide Management Organization (SMO), which is collected using the SMO's electronic health record, OBHIS, and LADDS. OBH data are required for federal reporting to Substance Abuse and Mental Health Services Administration (SAMHSA) and also structured to facilitate analysis, reporting, and submittal of data to meet the reporting requirements of various parties. Data sets are transmitted to the OBH secure FTP site and are processed and stored in OBH data warehouse. OBH data provides consumers served, services provided, and treatment outcomes for mental health and addictive disorders.

IX) METHOD OF DATA ACCESS OR TRANSFER

The data sharing permitted under this agreement does not apply to direct access to secure servers. This agreement permits the provision of case level data at the direct request of analysts in each program office, as necessary to fulfill job duties and support the efficiency and effectiveness of their respective program offices.

Data will be read-only, downloaded to the DHH SAS server, and securely exchanged via SMTP messaging with TLS encryption. Records are to be stored in secure locations and accessed with local PCs encrypted with BitLocker Drive Encryption. In addition, data may be accessed through restricted access shared folders which contain data which is not real-time.

X) REGULATORY COMPLIANCE AND ACCESS TO RECORDS

A. Medicaid and HIPAA Requirements

To the extent applicable to this Data Sharing Agreement, parties agree to information exchange in compliance with all applicable state and federal confidentiality requirements, including but not limited to state requirements under R.S. 46:56, and including but not limited to the requirements of federal Medicaid regulations, 42 C.F.R.431.300 et seq. and the federal privacy, security, and standards for electronic transactions regulations (45 C.F.R. Parts 160-164) promulgated pursuant

to the Health Insurance Portability and Accountability Act of 1996 (all of which are collectively referred to herein as “HIPAA requirements”).

The parties agree to comply with the provisions of the HIPAA Security Rule (45 C.F.R. Part 164, Subpart C) and to establish appropriate administrative, technical, and physical safeguards to protect the confidentiality of the data and to prevent unauthorized use or access to it. The safeguards shall provide a level and scope of security that is not less than the level and scope of security established by the Office of Management and Budget (OMB) in OMB Circular No. A-130, Appendix III, “Security of Federal Automated Information System”, which sets forth guidelines for security plans for automated information systems in Federal agencies.

B. Health Information Technology for Economic and Clinical Health Act (HITECH)

To the extent applicable to this Data Sharing Agreement, parties agree to comply with the Health Information Technology for Economic and Clinical Health Act, codified at 42 U.S.C. §17931. Users will follow DHH security incident response plans regarding security breach response. Penalties for a covered entity or business associate violating HITECH range from \$100 per violation to \$1.5 million for all violations in a calendar year. Criminal penalties for the deliberate mistreatment of PHI or failure of timely breach reporting may apply directly to any DHH employee responsible for the offense. Penalties for individuals cannot exceed \$250,000 and/or imprisonment not more than ten years.

C. Confidentiality of Alcohol and Drug Abuse Patient Records

To the extent applicable to this Data Sharing Agreement, parties agree to comply with the Drug Abuse Prevention, Treatment and Rehabilitation Act; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, and applicable sections of the Public Health Service Act, codified at 42. U.S.C. 290dd-2 (“the Privacy Statute”). Parties also agree to strictly maintain the confidentiality of patient records of drug, alcohol, and other drug treatment programs in addition to treatment and assessment for pathological or compulsive gambling. Parties agree to comply with the Privacy Statute and any of its current and future accompanying regulations (42 C.F.R. Part 2).

D. Vital Records Data Confidentiality

To the extent applicable to this Data Sharing Agreement, Parties agree to comply with the Vital Statistics Laws, codified at LA R.S. 40:41 et seq. Pursuant to these laws, the agencies agree that data contained in the vital records registry shall be made available for review or use by DHH in evaluating the effectiveness of departmental programs. The data shall only be utilized for this specific purpose. The agencies also agree that any DHH employee using data that may contain identifying information shall sign a statement ensuring confidentiality; any identifying data shall also be stripped from resulting databases as soon as the need for it has expired. Agencies agree that all data shall be destroyed or returned to the office of vital records by DHH upon the finalization of the evaluation process.

XI) DISCLOSURE

Parties to this agreement affirm that data will only be accessed and utilized in accordance with established and approved protocols and procedures, which may include sharing protected health information with OPH, OBH, and BHSF business associates for contracted purposes, including care coordination, quality assurance, and performance improvement. Data provided by this agreement can only be used for the legitimate business purposes of the program that allow for the data to be collected and reported. Data provided shall only be made available to authorized personnel in the program area with a need for access. All personnel shall maintain privacy and confidentiality and shall continually safeguard all client-specific information as required by both state and federal law; confidential data shall not be publicly distributed, released for viewing, or accessed through the Internet.

Program offices will maintain users' access and security files so that individuals who are no longer authorized to use the data are deleted in a timely manner. An audit of users will be conducted by each program office quarterly. Each agency agrees to provide audit trails for the inquiries and use of the data. All requests for protected health information must be approved by the respective Section Chiefs.

All staff who access data must sign a User Agreement (see Addendum B below).

XII) LOCATION OF MATCHED DATA AND CUSTODIAL RESPONSIBILITY

Parties to this agreement affirm that: The parties mutually agree that the original program office will be designated as "Custodian" of the file(s) and will be responsible for the observance of all conditions for use and for establishment and maintenance of security agreements as specified in this agreement to prevent unauthorized use. Matched data will remain under the purview of the original program office and will not be disclosed to persons outside the agency or office without written authorization.

This agreement represents and warrants further that, except as specified in an attachment or except as authorized in writing, that such data shall not be disclosed, released, revealed, showed, sold, rented, leased, loaned or otherwise have access granted to the data covered by this agreement to any person. Access to the data covered by this agreement shall be limited to only those individuals necessary to achieve the purpose stated in this agreement and to those individuals on a need-to-know basis only. Individuals are listed in Addendum A.

Any results of the data matching which contains individually identifiable data cannot be released outside the agency unless the release is approved by the Medicaid Director and the Assistant Secretaries for the Office of Public Health and the Office of Behavioral Health. Any summary results, however, can be shared. Summary results are those items which cannot be used to identify any individual. It should be noted that the stripping of an individual's name or individual identification number does not preclude the identification of that individual, and therefore is not sufficient to protect the confidentiality of individual data.

XIII) AUTHORIZATION

The data sharing outlined in this agreement is limited to the analysts authorized in Addendum A. This list will be updated upon changes in employee status or turnover. In addition, the list will be audited and updated quarterly. Changes to the list of authorized reporters must be approved with signature by the Liaison Officials listed below. Updates and changes to the list in Addendum A will not require formal amendments as provided in paragraph XV of this agreement.

XIV) EXCLUSIONS

This agreement is exclusive of any other current agreements between the Office of Public Health and/or the Office of Behavioral Health and/or Medicaid.

XV) PERIOD OF AGREEMENT

- A. This agreement becomes effective on December 1, 2013 and terminates on December 31, 2018.
- B. This agreement may be cancelled by either party with 30 days written notice.
- C. In the event of a state of emergency, including but not limited to any form of natural disaster, either agency may be forced to suspend services. This agreement will remain in effect during such suspensions and the services will resume when the affected agency resumes normal operations.

XVI) AMENDMENTS

- A. Changes made to this agreement will be added as a formal amendment which requires all parties to acknowledge by signature.
- B. This agreement shall be reviewed annually to determine if any revisions are necessary.
- C. In the event it becomes necessary to change all or part of this agreement to reflect the changing needs of the parties, new laws, regulations, etc., either party may request discussion of proposed amendments through the designated liaison officials. Modifications of the provisions of this agreement shall be valid only when reduced to writing and duly signed by the authorized representatives of each party.

XVII) LIASION OFFICIALS

For the BHSF: Mary TC Johnson, Medicaid Deputy Director

For OPH: Joseph Foxhood, Director, Center for Population Health Informatics

For OBH: Michael Carrone, Program Manager, Health Informatics

Signature pages follow.

XVIII) SIGNATURES

By signing this data sharing agreement, the BHSF, OBH, and OPH agree to all requirements contained herein.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date(s) written below.

Acting Medicaid Director, DHH/BHSF

Assistant Secretary, Office of Public Health

Assistant Secretary, Office of Behavioral Health

Addendum A [removed]

Addendum B

The signed copies of each analyst's confidentiality agreement, to be developed with the Chief Security Officer upon finalization of this data sharing agreement, will be attached as Addendum B.