

Untangling HIPAA Compliance in the Public Sector



Presented by:

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Topics for Discussion



- 1. Hybrid Compliance**
- 2. Data Requests**
- 3. Data Sharing**

Public Data Ecosystem: State and Local



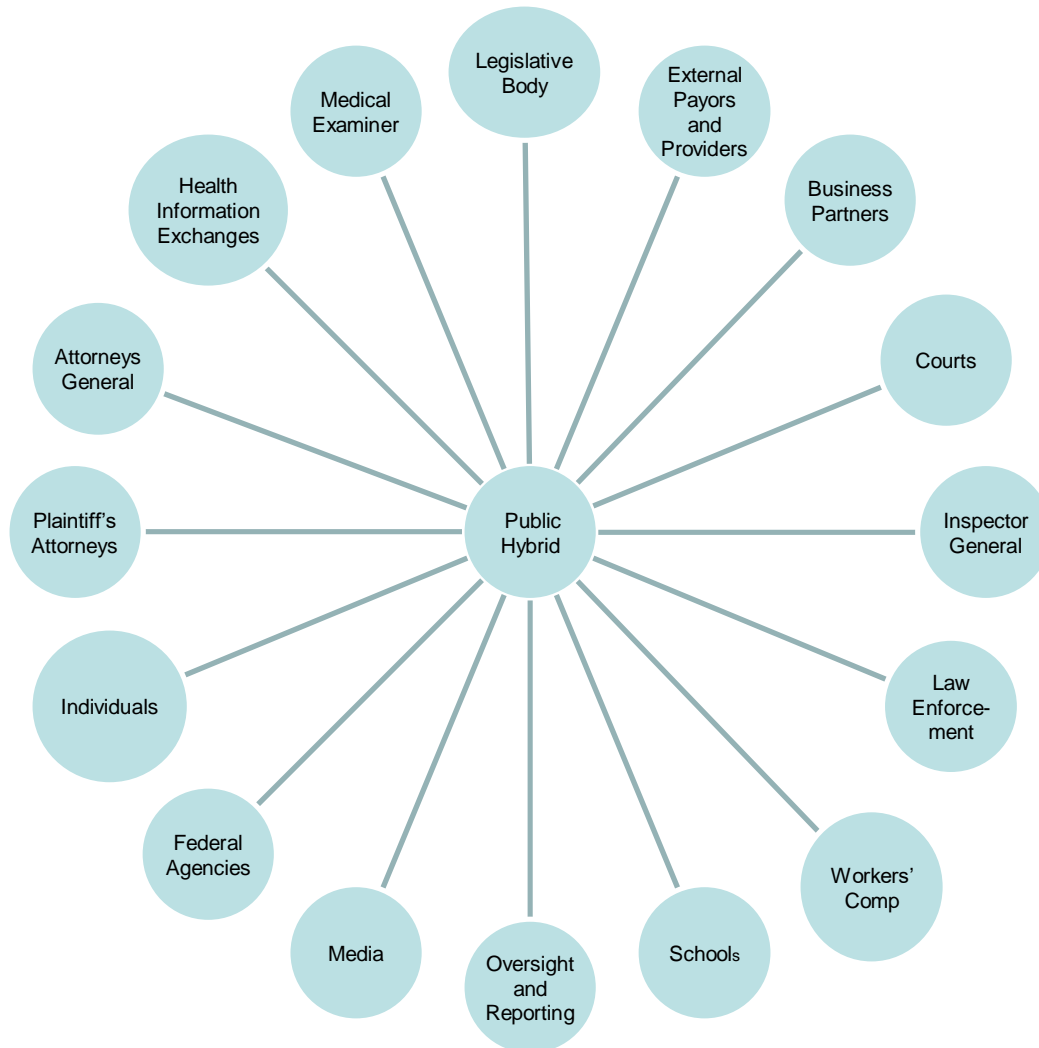
Unique because:

- **Delivery of governmental services and human services --
Across a multitude of business areas**
- **Unexpected Big Data**
- **Complexity of compliance standards**
- **Managing competing interests of privacy and transparency**
- **HIPAA* presents a unique set of concerns**

* Administrative Simplification Regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996



Selected Interests in Public Hybrid Data





HIPAA Compliance Structures

Hybrid Model Option - §164.103, pursuant to § 164.105(a)(2)(iii)(D)

- **“Go it Alone” recommendations**

- **Hybrid Model Compliance**
Perhaps the biggest differentiator is the popularity of the hybrid model in the public space versus the homogeneous covered entity approach commonly seen in the private sector.



Hybrid Model Compliance

Why Choose the Hybrid Model?

- **Cost Containment**
- **Focuses implementation on specific business area**
- **Standardization**
 - **Promotes consistency across divisions and agencies**

Tradeoff: Requires Major Coordination

- **Identification of covered components across the entity**
 - **Can fluctuate depending on services and access to data**
- **Collaboration across disparate functions and administrations**
- **Requirements of §164.103, pursuant to § 164.105(a)(2)(iii)(D)**



Public Hybrid Creation 101

- **Identification of “health care components” (HCC)**
 - **Differentiating between HCCs and Business Associate-like functions**

- **Department/Division/ Section Surveys**

- **Audit Departmental function**

- **Formal designation process before your governmental entity’s governing body**

- **Creation of formal record (Executive Order; Council or Board File number) to be retained pursuant to the HIPAA Regulations**



Public Hybrid Creation 101

(continued)

- **Develop HIPAA Policies & Procedures for Hybrid Entity**
- **Training**
- **Periodic auditing for continued necessity of HCC status**
- **Internal Business Associate-like functions - Memoranda of Agreement/Understanding where necessary**



Selected Hybrid Considerations

- **Governance structure**
- **Protecting Individuals/Patients**
- **Implementation planning**
- **“Springing” components/
special projects**
- **Communication**
- **Early HIPAA Engagement**
- **Legislation**
- **Legal Synthesis**
- **Procurements**
- **Surveillance**

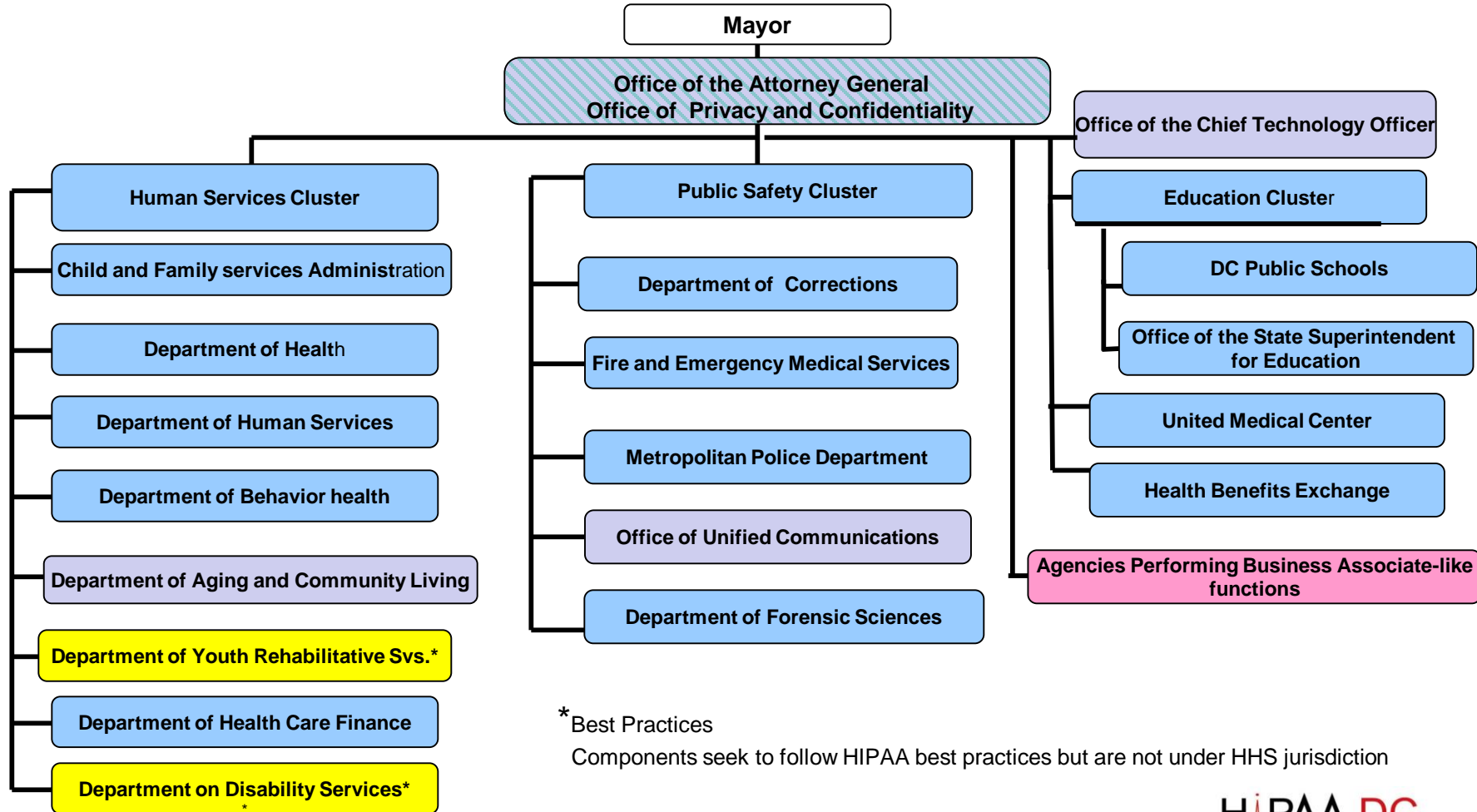


Selected Hybrid Considerations

- **Tools and a calendar**
- **Auditing and Assessments**
- **Fast moving technology**
- **Data flows**
- **Workforce considerations**
- **Reporting structure**
- **Best practices**
- **Risk and mitigation tracking**
- **Opportunities**
- **Data systems**
- **Etc.**



District of Columbia Approach



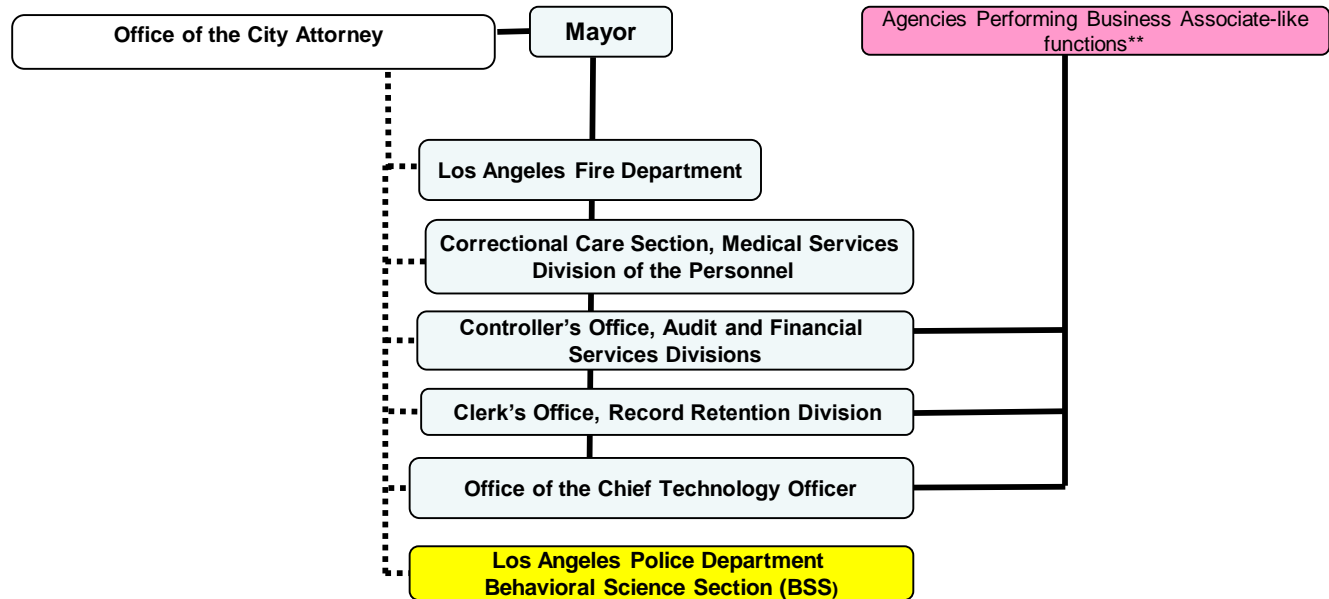
* Best Practices
Components seek to follow HIPAA best practices but are not under HHS jurisdiction



Covered Component
 Best Practice Component
 Business Associate-like
 Future



City of Los Angeles Approach



*Best Practices Components seek to follow HIPAA best practices but are not under HHS jurisdiction

**Covered Component currently performing Business Associate-like function;
under evaluation for de-designation and conversion to internal Business Associate

Covered Component
 Best Practice Component
 Business Associate-like; Possible Future Internal Business Associate



Hybrid Data Requests

DATA USES:

Treatment [45 C.F.R. § 164.501, CA Civil Code § 56.10(c)(1),

Billing [45 C.F.R. § 164.506(c)(1)-(2), CA Civil Code § 56.10(c)(3)], and

Health Care Operations Operations [45 C.F.R. § 164.501 and 164,502 (a)(1)(ii)] “TPO”
Purposes

DATA DISCLOSURES:

Requests:

On behalf of the Patient:

- 1) **Patient: Authorization** [45 C.F.R. § 164.508]
- 2) **Deceased Patient’s Representatives** [45 C.F.R. § 502(G)(4)]

Disclosures:

1) **Required by Law**

- a) **Occupational Safety and Health Administration (OSHA/CalOSHA)**
- b) **Public Health Reporting** [45 C.F.R. §164.502(b)]
- c) **Workers’ Compensation Subpoena**
[45 C.F.R. § §164.512(b)(1)(v) and 164.512(l); CA Civil Code §§56.10(c)(18) and 1798.24]
- d) **Health Oversight** (audits, discipline, license review) [45 C.F.R. §164.512(d); CA Civil Code §§56.10(c)(14) and 1798.24; CA Health and Safety Code §1797.122]



Hybrid Data Requests

Disclosures: (Continued)

2) Judicial and Administrative Proceedings

- a) **Court Order; Subpoena, “or other compulsory legal process”** with “reasonable assurance” the Patient will not object to the disclosure. [45 C.F.R. § 164.512(e)(1)-(e)(2); CA Civil Code § 1798.24; To a board, commission or administrative agency pursuant to an investigative subpoena under CA Government Code §11180]

3) Law Enforcement:

- a) **Method:** Court Ordered Warrant; Subpoena, Summons, Grand Jury Subpoena, Administrative Request
- b) **For Whom? Suspect/Fugitive/Material Witness? Crime Victim? Suspected Victim of Child or Elder Abuse? Deceased Crime Victim Patient? Crime on the Premises; During an emergency not on premises of the C.E. [45 C.F.R. § 164.512].**

Example: The Los Angeles Fire Department Law Enforcement Request for Protected Health Information [PHI] Form is located at : <https://www.lafd.org/safety/ems-billing/city-attorney-district-attorney-law-enforcement>



Hybrid Data Requests

Disclosures: (Continued)

- 3) **Research** [Institutional Review Board 45 C.F.R. § 164.512(i)(1)(A), CA Civil Code Section 1798.24(t)
 - a) Expert? [45 C.F.R. §164.514(b)]
 - b) Safe Harbor (18 Identifiers) [45 C.F.R. § 164.514(b)]
 - c) Limited Data Set (16 Identifiers) [45 C.F.R. § 164.514(e)(2)]
- 4) **Correctional Institution Exception** (PHI needed for Patient, Other Inmates, or Officers/Employee Safety) [45 C.F.R. § 164.501; 164.512(j); 164.512(k)(5) and 164.514(h); CA Civil Code § 56.10(c)(14) and 1798.24(d)-(f)]
- 5) **Incidental Disclosures**
 - a) **Doctrine of Minimum Necessity** [45 C.F.R. § 164.530(i)]
 - b) **Policies and Procedures** [45 C.F.R. § 164.514(d)]
6. **Public Records Act: Freedom of Information Act (FOIA) and California Public Record Act (CPRA)**



Hybrid Data Requests - Management

HIPAA-compliant Management of Requests.

- **Systems of accountability**
- **Processing**
- **Time management**
- **Documentation**
- **Know when to refer to Legal**



Hybrid Data Sharing

- **Good government is commonly concerned with efficiency and leveraging resources**

- **Impact of digitization**
 - **More demands to share information for service improvement**
 - **Easier data sharing**

- **Sharing is inter-governmental and intra-governmental**



Hybrid Data Sharing – Management

- **Must have structure for approval**
 - **Recognize when agreement is required**
 - **Timeliness**
 - **Data protection review**
 - **Legal sufficiency**

- **Implementation, monitoring and updates**

- **Comprehensive agreements**

- **Memoranda of Agreement/Understanding Management**



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