

## CHHS Data Sharing Frequently Asked Questions (FAQs)

### **1. Do CHHS departments have to use the Intra-Agency Data Exchange Agreement (Agreement) and the Business Use Case Proposal process in order to share data with other CHHS departments?**

Yes. Every department and office in CHHS is included in the Agreement and must use the Business Use Case Proposal process in order to share confidential data with other CHHS departments.

### **2. Our department wants to receive data from another CHHS department. What do we do?**

Departments that want to receive data must first go through a decision-making process that involves communicating with the intended data providing department. Department "Data Coordinators" are individuals in each CHHS department that can help data requesting departments identify data assets available as well as connect data requestors to the appropriate data stewards. Email the AIO Governance Liaison at [CHHS@osi.ca.gov](mailto:CHHS@osi.ca.gov) to identify a department's Data Coordinator.

Departments are responsible to submit Business Use Case Proposals and work together to fill them out as required by Section II.A.1 of the Agreement. Even when a department does not think it can share data, that department must work with the requesting department to submit a disputed Business Use Case Proposal. See the [CHHS Data Exchange Agreement Process Flow for more information](#).

### **3. What is the department approval process for the Business Use Case Proposal? Who needs to sign off on the Business Use Case Proposal?**

Each department's internal Business Use Case Proposal approval process will be unique, pursuant to the department's needs and operational structure. At a minimum, Business Use Case Proposal approval should be granted by either the Chief Deputy Director or the Program Deputy Director of both the requesting and providing departments. The Data Coordinators for each department must also provide their approval of the completed form. Other signatories may also be required to approve the Business Use Case Proposal, as appropriate.

It is not recommended that Business Use Case Proposals enter into department administrative contracting processes, unless the Business Use Case Proposal involves a transfer of funds. In such cases, the contractual process can run in a parallel track to the Business Use Case Proposal approval process.

### **4. Why do we have to do these Business Use Case Proposals? Isn't the Intra-Agency Data Exchange Agreement an agreement to share data?**

The Intra-Agency Data Exchange Agreement is not the entire agreement with regard to individual data sharing projects. The entire agreement has been bifurcated, meaning that it is made up of two separate pieces. The Intra-Agency Data Exchange Agreement is an overarching, general sharing agreement intended to establish a legal framework for data initiatives. Whereas the Business Use Case Proposals specify the details of individual sharing projects in a way that allows for streamlined sharing. Both the Intra-Agency Data Exchange Agreement and the Business Use Case Proposals together make up a final agreement for an individual project. So, the Business Use Case Proposals are necessary in order to establish a final, legally effective agreement for individual sharing projects. One Business Use Case Proposal should be developed per business case or project. The Business Use Case Proposal can specify regular, ongoing frequencies for data sharing (e.g., once per year).

**5. There are limited resources in departments to process and execute data exchanges. How long should the Business Use Case Proposal process be expected take?**

The spirit of the Intra-Agency Data Exchange Agreement is to create an environment at CHHS where it is easier and faster to share data, while providing the appropriate due-diligence and documentation. Given this goal, CHHS departments should strive to expedite data exchanges pursuant to the Agreement.

Department executive leadership, including the Department Data Coordinators and the AIO Governance Liaison, will play a role in stewarding Business Use Case Proposals through the process.

This process will be monitored to support regular iteration and continual improvement. A baseline target for data exchanges is **three months** from concept development to physical data transfer. This baseline should be revisited regularly as processes are refined.

Departments that are receiving or sending multiple data requests may need to work with other CHHS departments to prioritize the various requests. In general, data requests from CHHS departments should take priority over data requests from third-parties, unless required by law or contractual obligation.

**6. Can the Business Use Case Proposal be used to share non-confidential data?**

The Intra-Agency Data Exchange Agreement is designed for confidential and sensitive data. The [CHHS Open Data Portal](#) is the go-to resource for public CHHS data. Aggregate, public datasets may be obtained by contacting the data providing department. The Business Use Case Proposal can be an appropriate method by which to document the request for a custom aggregate report, if a providing department does not have existing processes in place for such data requests. See the data providing department's website for more information.

**7. Our department wants to add more information to a Business Use Case Proposal than the form currently appears to require. May we submit additional information? What if we want to submit less information?**

A department may choose to submit whatever information they think may help in the decision-making process. However, at minimum, a department must submit the information requested on the Business Use Case Proposal form.

**8. Must departments create a Business Use Case Proposal if the disclosure of data between departments is required by law?**

Yes. Departments are still required to submit a truncated Business Use Case Proposal to the AIO Governance Liaison for tracking and quality improvement purposes.

**9. Section III.8 states that data recipient departments may only use or disclose data as permitted or required by an undisputed or approved Business Use Case Proposal or as required by law. Does this mean that a department can use or disclose health data without the need to follow the law's requirements as long as the Business Use Case Proposal is undisputed or approved?**

No. This Section means that data receiving departments are limited in how they can use or disclose health data. Specifically, this section means that HIPAA covered departments may only use or disclose health data if it is either: (1) required by law; or (2) pursuant to an undisputed or approved Business Use Case Proposal.

**10. Section II.B.5 appears to state that a data providing department cannot refuse to share data if a Business Use Case Proposal is disputed but has been approved. Is this correct?**

Yes. When two or more departments do not agree that data should be shared, the Business Use Case Proposal is disputed. The CHHS Risk Management Subcommittee is required to attempt to mediate a disputed Business Use Case Proposal after collecting information from both departments and considering the reasons given for either sharing or not sharing the data. After meeting with the departments and considering all of the information, the CHHS Risk Management Subcommittee assesses the risks and benefits of the data sharing proposal and determines whether the proposal should be approved. If a compromise cannot be reached, the matter is referred by If a department disagrees with the decision from the CHHS Risk Management Subcommittee, the department can elevate the decision to the CHHS Agency Information Officer for elevation to the CHHS Governance Advisory Council. Both the CHHS Risk Management Subcommittee and the CHHS General Counsel present recommendations to the CHHS Advisory Council. If the dispute is not resolved, the CHHS Executive Council Liaison escalates the dispute to the Undersecretary and General Counsel, as a convening of the CHHS Executive Council. Department directors and others needed to resolve the dispute may be convened for the CHHS Executive Council, as determined by the Undersecretary. The Undersecretary has the final decision-making authority. If the Undersecretary approves a Business Use Case Proposal, a department cannot refuse to provide the data.

**11. Under the Agreement, does the governance CHHS Risk Management Subcommittee and/or the Undersecretary have the ability to overturn departmental privacy and security decisions on data exchanges/releases other departments?**

Yes. Section I in subsections (e) and (h) and Section II.A.4 of the Agreement provide the framework for the decision-making process when two or more departments disagree on sharing data. The CHHS Risk Management Subcommittee is required to attempt to mediate a disputed Business Use Case Proposal after collecting information from both departments and considering the reasons given for either sharing or not sharing the data. Then, the CHHS Risk Management Subcommittee assesses the risks and benefits of the data sharing proposal and determines whether the proposal should be approved. If a department disagrees with the decision from the CHHS Risk Management Subcommittee, the department can elevate the decision to the CHHS Agency Information Officer for elevation to the CHHS Governance Advisory Council. If the CHHS Risk Management Subcommittee determines a compromise cannot be reached, the matter is referred by the CHHS Agency Information Officer to the CHHS Governance Advisory Council. Both the CHHS Risk Management Subcommittee and the CHHS General Counsel present recommendations to the CHHS Advisory Council. If the dispute is not resolved, the CHHS Executive Council Liaison escalates the dispute to the Undersecretary and General Counsel, as a convening of the CHHS Executive Council. Department directors and others needed to resolve the dispute may be convened for the CHHS Executive Council, as determined by the Undersecretary. The Undersecretary has the final decision-making authority. If the Undersecretary approves a Business Use Case Proposal, a department cannot refuse to provide the data. The CHHS Executive Council has final decision-making authority. The departments must abide by this decision under the terms of the Agreement.

**12. What happens to contracts/agreements already in place? Will contract renewals with CHHS departments need to go through the Business Use Case Proposal process?**

Contracts/agreements already in place are not affected. However, any renewal of an existing agreement will need to go through the Business Use Case Proposal process.

**13. Section II.A.16 appears to require a department to provide a certification to the Governance Liaison and the CHHS Risk Management Subcommittee that states in writing that a department has adequate data protection consistent with federal and state laws and regulations. How should a department accomplish this?**

Every department in CHHS is already required to provide the Risk Management and Privacy Program Certification SIMM 5330-B to the California Information Security Office (CISO). A department can fulfill this Intra-Agency Data Exchange Agreement requirement by submitting a copy of the signed SIMM 5330-B certification submitted by the department to the CISO. If a department chooses to submit a different certification than a copy of the signed SIMM 5330-B, the department must ensure the certification is substantially similar to the 5330-B.

**14. The Agreement appears to cover health privacy laws such as the Health Insurance Portability and Accountability Act (HIPAA). Does the entire agreement include the**

**application of HIPAA regulations or is that only contained in Section III Memorandum of Understanding for HIPAA Covered Entities and Business Associates?**

The Agreement is intended to be a general agreement between all departments and offices within CHHS. Some departments and offices are not considered “covered entities” or “business associates” under HIPAA. The application of HIPAA regulations, including the HIPAA requirement that covered entities and business associates execute a written agreement to protect health information, is exclusively under Section III. Section III does not apply to departments and offices that fail to meet the definition in the HIPAA regulations of covered entities, business associates, or hybrid entities. So, Section III only applies to departments that meet the definitions in HIPAA regulations for covered entities, business associates, or hybrid entities. In addition, departments and offices that have been determined to meet the HIPAA definitions by the California Office of Health Information Integrity shall comply with Section III.

**15. Will the Business Use Case Proposals be public information that must be disclosed under the Public Records Act?**

Under the California Public Records Act, all government documents are considered public documents and disclosable unless the documents and/or the content of the documents meet an exception that would make them confidential and non-disclosable. A typical Business Use Case Proposal should not contain confidential or sensitive information. However, there are times when a department may need to include information about individuals or security information that, if released, would create a risk to the security of the department or be unlawful under other laws. Any information or additional documents attached to the Business Use Case Proposal that meet an exception in the Public Records Act should be marked and treated as confidential, redacted, and/or not disclosed to the public as appropriate. It is recommended that departments contact their internal legal divisions when questions arise regarding whether a Business Use Case Proposal or attachments should be considered confidential and withheld from public disclosure.

**16. Section II.B.3 requires a department that uses specialized security measures to protect data, including when required by the federal government, to communicate these additional required security measures to the receiving department. How does a department satisfy this requirement?**

The data providing department must adequately communicate the additional security measures required to protect the data in a way that allows the receiving department to effectively understand and implement them. The data providing department must include these additional security measures in the Business Use Case Proposal as part of the proposal. The receiving department must adequately implement the additional security measures consistent with the Business Use Case Proposal.

**17. Section II.A.11 specifies that “Each CHHS Department shall only modify its own data.” How does this provision apply to situations where data recipients may combine datasets or produce new analyses?**

Section II.A.11 is intended to ensure that the integrity of the original data is not altered without consent or knowledge of the data providing department. The purpose of this provision is to ensure that original data is kept intact to prevent inadvertent misrepresentation of a department or program by the modification of its data. This provision does not prevent or prohibit a department from using another department's data and modifying it into something new, either alone or in collaboration. However, if a department modifies data, the department is responsible to ensure that users of the data, particularly if released as public data, understand that the data is not original but modified. This can be accomplished through documentation, labeling, metadata, or other methods.