Article 14—"Information Privacy and Security Provisions" Decision Tree

October 2014

This document will help you determine whether (and which Sections of) Article 14 "Information Privacy and Security Provision" apply. Follow these instructions:

1. Review **each** of your contracts/MOAs/MOUs/procurements using this Decision Tree.
2. Read definitions on back of this page **before** proceeding.
3. **Check** the appropriate box below for each question, then follow instructions.
4. **Complete** blue box at bottom of page and **email** completed Decision Tree to Angie.DeVoss@sdcounty.ca.gov by **November 1.**

QUESTION A is to determine whether the contract involves PROTECTED INFORMATION, and thus whether Article 14 may apply

1. Will the contractor create, use, share, or transmit *PROTECTED INFORMATION* regarding County clients (such as, but not limited to, a contractor who: processes reports, treats clients, performs quality assurance, or hosts County data)?
2. Will the contractor be able to routinely access *PROTECTED INFORMATION* (such as, but not limited to, a contractor performing shredding or janitorial services)?

☐ If YES to either Question A1 or A2, or both Questions A1 and A2, GO to Question B.

☐ If NO to both Questions A1 and A2, STOP here. Article 14 is **NOT required.**

QUESTION B is to *determine whether the contract pertains to a State Agreement, in which case Article 14 is required*

1. Will the *PROTECTED INFORMATION* listed in Question A pertain to clients covered by a State Agreement, specifically Eligibility, Behavioral Health, and/or Public Health HIV/AIDS?
2. Will the *PROTECTED INFORMATION* pertain to Medi-Cal clients?

☐ If NO to both Questions B1 and B2, GO to Question C.

☐ If YES to either Question B1 or B2, or both, STOP here. **ALL sections** of Article 14 are required.

QUESTION C is to determine whether the contract involves PROTECTED HEALTH INFORMATION, which may require Article 14

1. Will the contractor create, use, share, or transmit *PROTECTED HEALTH INFORMATION* regarding County clients (such as, but not limited to, a contractor who processes reports, performs quality assurance, or hosts County data)?
2. Will the contractor be able to routinely access *PROTECTED HEALTH INFORMATION* (this includes, but is not limited to, a contractor performing shredding or janitorial services)?

☐ If YES to either Question C1 or C2, or both, GO to Question D.

☐ If NO to both Questions C1 and C2, STOP here. Article 14 is **NOT required.**

QUESTION D is to determine whether the contract may not need Article 14 due to exemptions under the Health Information Portability and Accountability Act (HIPAA).

1. Will the contractor be using the *PROTECTED HEALTH INFORMATION* solely to provide health or medical treatment to County clients?
2. Is the contractor a health plan who will be using the *PROTECTED HEALTH INFORMATION* solely for payment?

☐ If YES to either Question D1 or D2, STOP here. Article 14 is **NOT required.**

☐ If No to both Questions D1 and D2, STOP here. **Article 14 is required**, but you do NOT need to include Section 2.

Contract Number: Contractor Name:

Name and Job Title of Staff Completing Decision Tree:

Program/Division: If Article 14 required, anticipated Contract Amendment Date:

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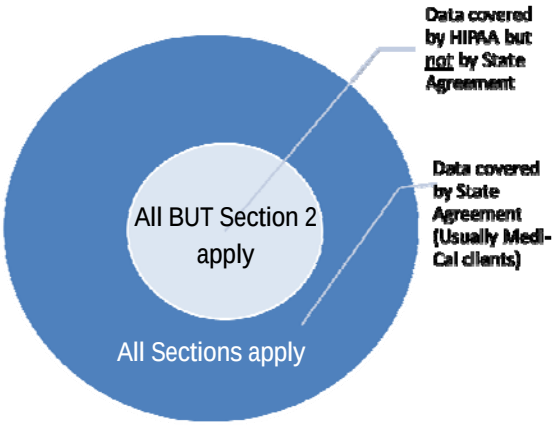
OVERVIEW

Article 14 – Information Privacy and Security Provisions ("Article 14") is the Agency-approved set of documents that encompass federal and State requirements related to Privacy and Security of *Protected Information*. It includes four sections, some or all of which may be applicable to a contract. The new Article 14 essentially expands privacy and security requirements established under the Health Insurance Portability and Accountability Act (HIPAA) to include State requirements. There are 4 sections, which are:

- Section 1: Business Associate Agreement
- Section 2: Privacy and Security of Personal Information and Personally Identifiable Information
- Section 3: Data Security Requirements
- Section 4: Miscellaneous



DIFFERENT TYPES OF INFORMATION

The Decision Tree on the other side of the page will help you to determine whether None or All of Article 14 applies or whether only part of Article 14 applies. To understand the Decision Tree, it is important that you can distinguish between different types of data.

Protected Information is a broad term that covers information created or received by the Agency that can be reasonably used to identify an individual. Examples may include, but are not limited to:

- *Demographic information, such as name, social security number, or zip code;*
- *Public Assistance or dependency information, such as case number or status;*
- *Medical information, such as medication or diagnosis; or*
- *Financial records, such as health plan information or credit reports*

Protected Information includes various types of data, such as:

- *Protected Health Information, defined as individually identifiable health information, including demographic information, that relates to an individual's physical or mental health, or the provision of, or payment for, health care (HIPAA section 160.103).*
- *Personal Information (California Civil Code section 1798.3)*
- *Personally Identifiable Information (National Institute of Standards and Technology (NIST) publication 800-122).*

EACH SECTION DEFINED

Section 1: Business Associate Agreement includes requirements for Protected Health Information. However, even if your contract does not appear to pertain to HIPAA, the contract may still need this section due to State requirements. If any part of Article 14 applies, you need to include this section.

Section 2: Privacy and Security of Personal Information and Personally Identifiable Information includes state requirements for certain types of Personal Information and Personally Identifiable Information. Section 2 generally applies if your contract pertains to a State Agreement.

Section 3: Data Security Requirements refer to security of all Protected Information, whether Protected Health Information, Personally Identifiable Information, or Personal Information. It specifies several types of security controls. If any part of Article 14 applies, you need to include this section.

Section 4: Miscellaneous details additional requirements for the contractor . If any part of Article 14 applies, you need to include this section.

Call 619-338-2808 with any questions.