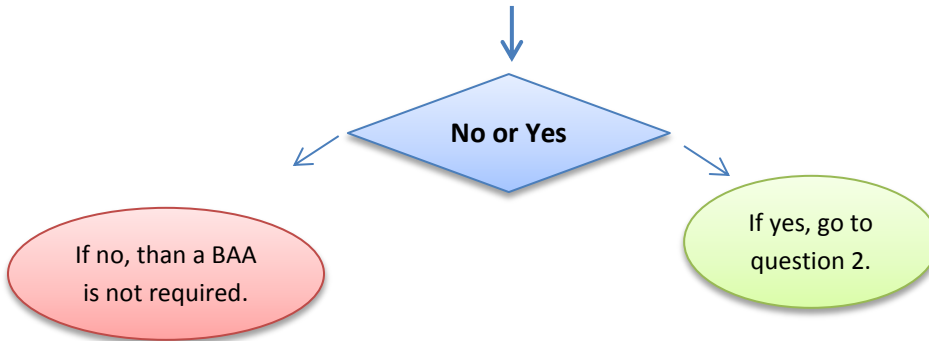


HIPAA BUSINESS ASSOCIATE DECISION TOOL

Question 1 – Is the MDHHS Section/Program that will be providing the protected health information (PHI) a Covered Component under the HIPAA Privacy Rule?

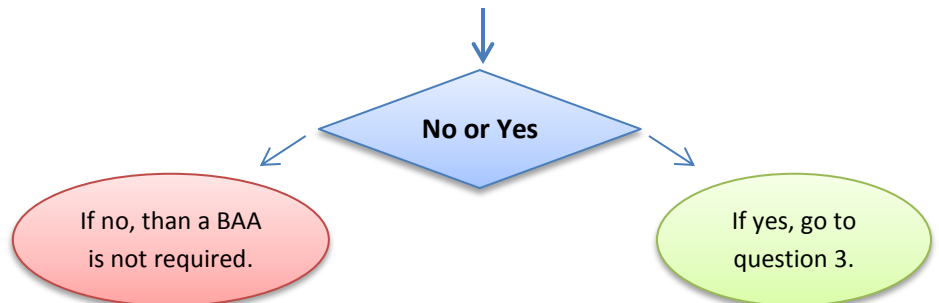
Not all MDHHS Sections and Programs are covered by HIPAA. Those that are covered by HIPAA are required to sign Business Associate Agreements with certain organizations and individuals to whom they share (PHI). Covered components of the Department include areas that meet the definition of a covered entity, as well as areas of the Department that perform business associate functions. Check with your supervisor or with the Office of Legal Affairs for assistance in determining if your area is covered by HIPAA.



PHI is Protected Health Information as defined by the HIPAA Privacy Rule. PHI generally refers to all "individually identifiable health information" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. "Individually identifiable health information" is information, including demographic data, that relates to any past, present or future health condition, and to the treatment or payment for healthcare services. 45 CFR 160.103

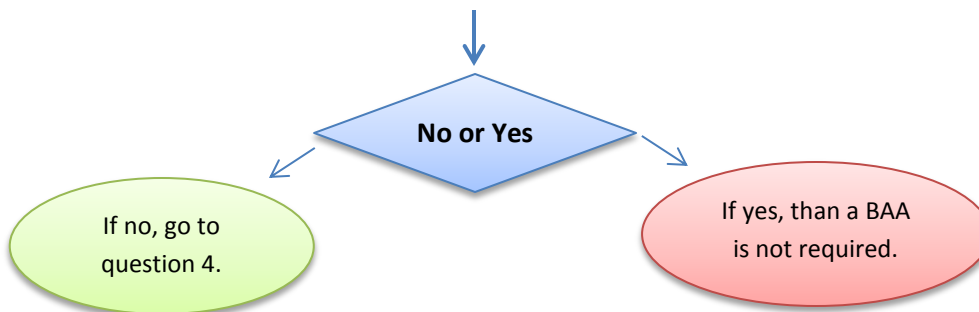
Question 2 - Does MDHHS provide PHI to a third party (a person or entity that is not a member of the MDHHS workforce)?

MDHHS's Workforce includes all employees, contractors, volunteers, trainees, etc. whose performance is under the direct control of MDHHS. (45 CFR 160.103)



Question 3 - Is the disclosure of PHI to the third party incidental?

For example, a photocopier repair person may inadvertently encounter PHI, but the repair person does not need to receive PHI in order to repair the machine. (45 CFR 164.502)

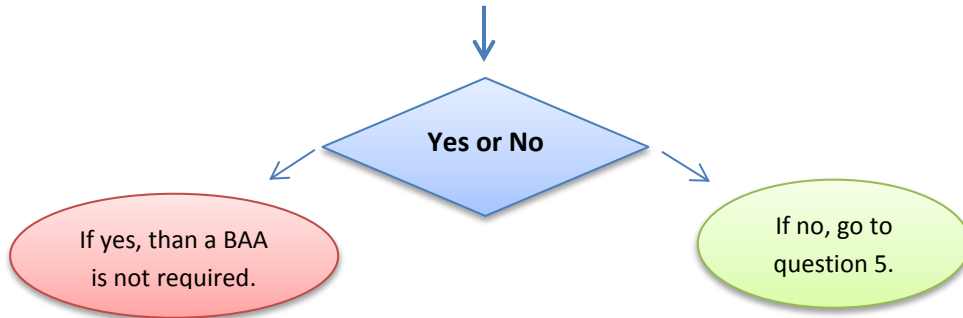


The HIPAA rule on Business Associates has many complicated details and exceptions, as well as a number of ambiguous definitions and interpretations. This Decision Tree guidance is provided to assist in the process of identifying when a Business Associate Agreement is necessary, but additional analysis may be needed. Contact the Office of Legal Affairs for assistance.

HIPAA BUSINESS ASSOCIATE DECISION TOOL

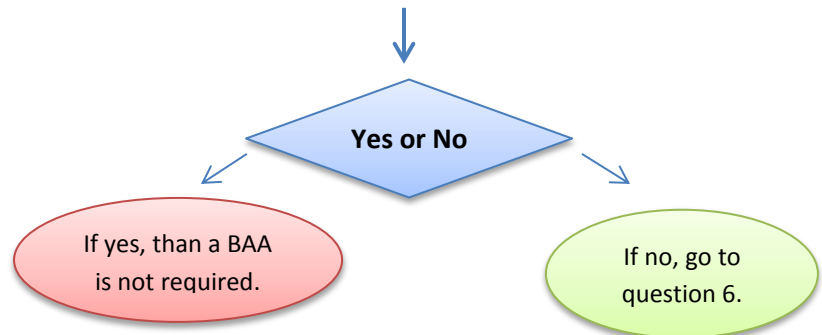
Question 4 – Is PHI being disclosed to an insurance plan for Payment Purposes?

Payment includes activities such as: billing and collection, eligibility or coverage determination of enrollees and the review of health care services for medical necessity, coverage and justification of charges. (45 CFR 164.506)



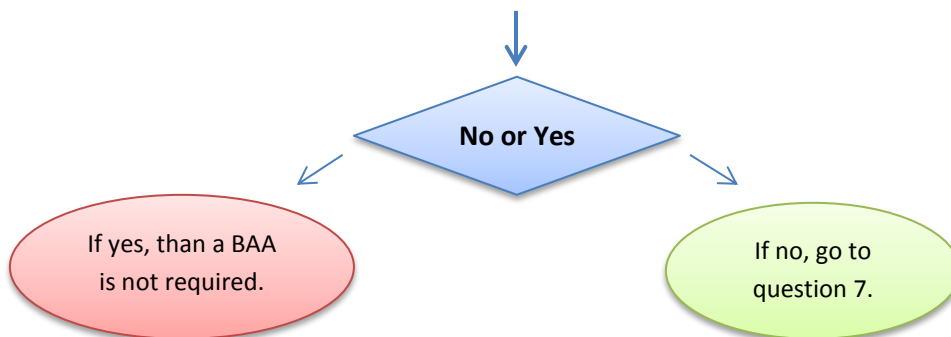
Question 5 - Is PHI being disclosed for an official investigation or proceeding?

The Privacy Rule is balanced to protect an individual's privacy while allowing important law enforcement functions to continue. The Rule permits disclosure of PHI to law enforcement officials, without the individual's written authorization, under specific circumstances. Contact the Office of Legal Affairs for assistance in responding to questions or requests regarding official investigations or legal proceedings. (45 CFR 164.512)



Question 6 - Is the PHI being disclosed to a healthcare provider for treatment purposes only?

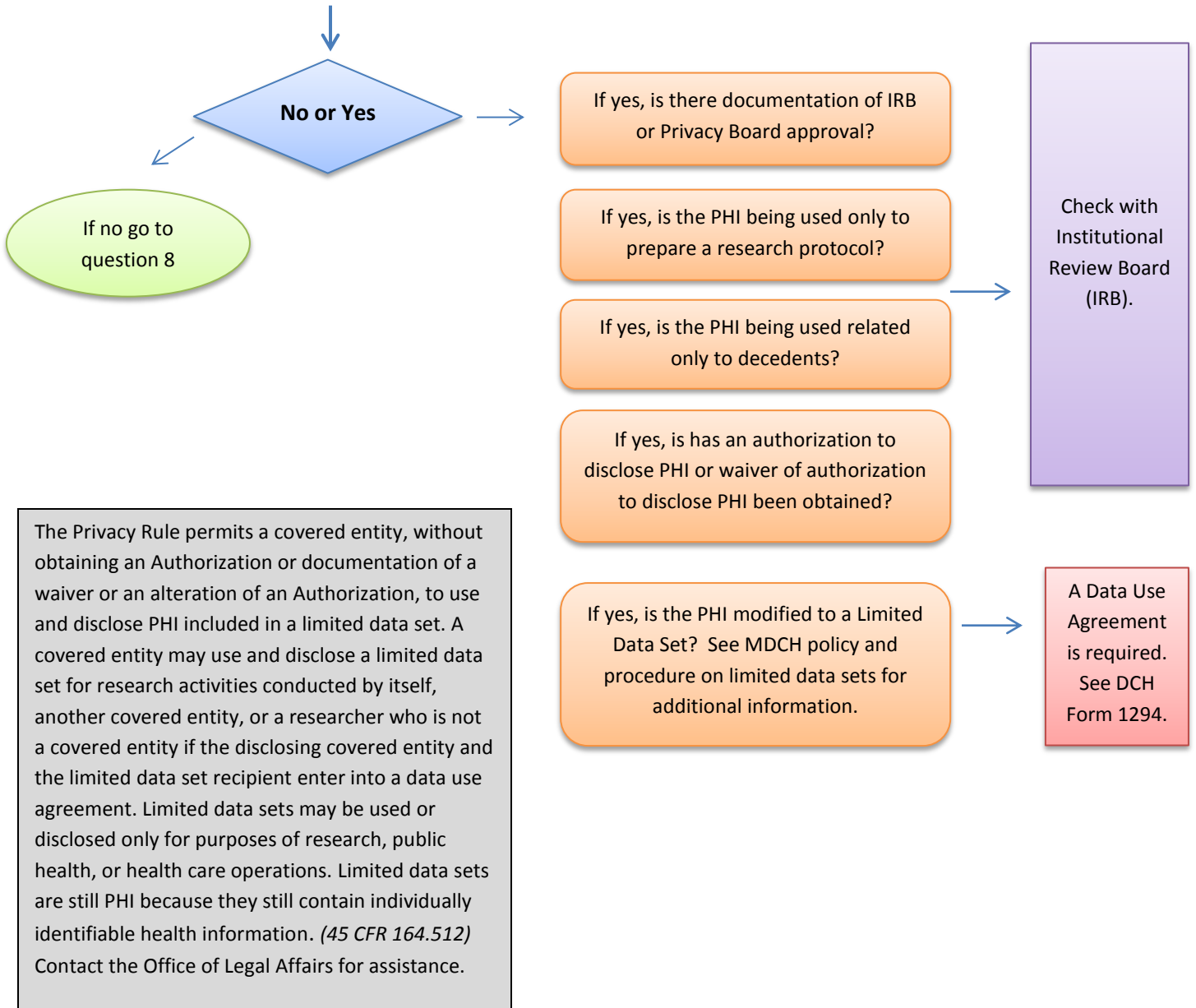
Treatment generally means: the provision, coordination, or management of health care services among providers, consultation between health care providers regarding a patient, or the referral of a patient from one health care provider to another. (45 CFR 164.506)



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HIPAA BUSINESS ASSOCIATE DECISION TOOL

Question 7 – Is the PHI being requested for Research Purposes?

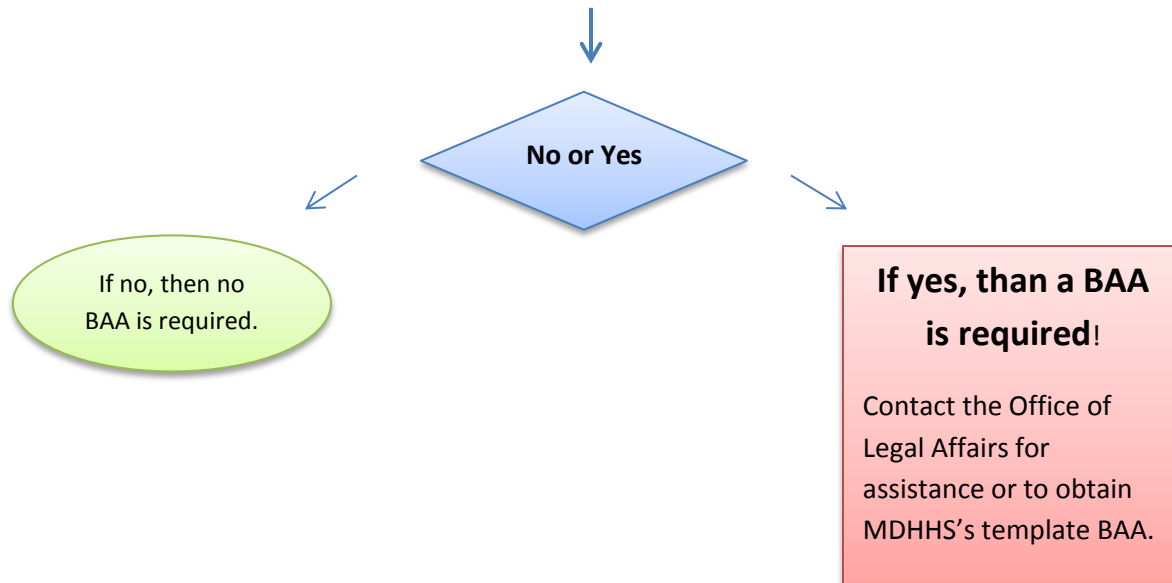


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HIPAA BUSINESS ASSOCIATE DECISION TOOL

Question 8 – Will the organization/individual create, receive, maintain or transmit protected health information in the course of providing services to or on behalf of MDHHS?

45 CFR 160.10.



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