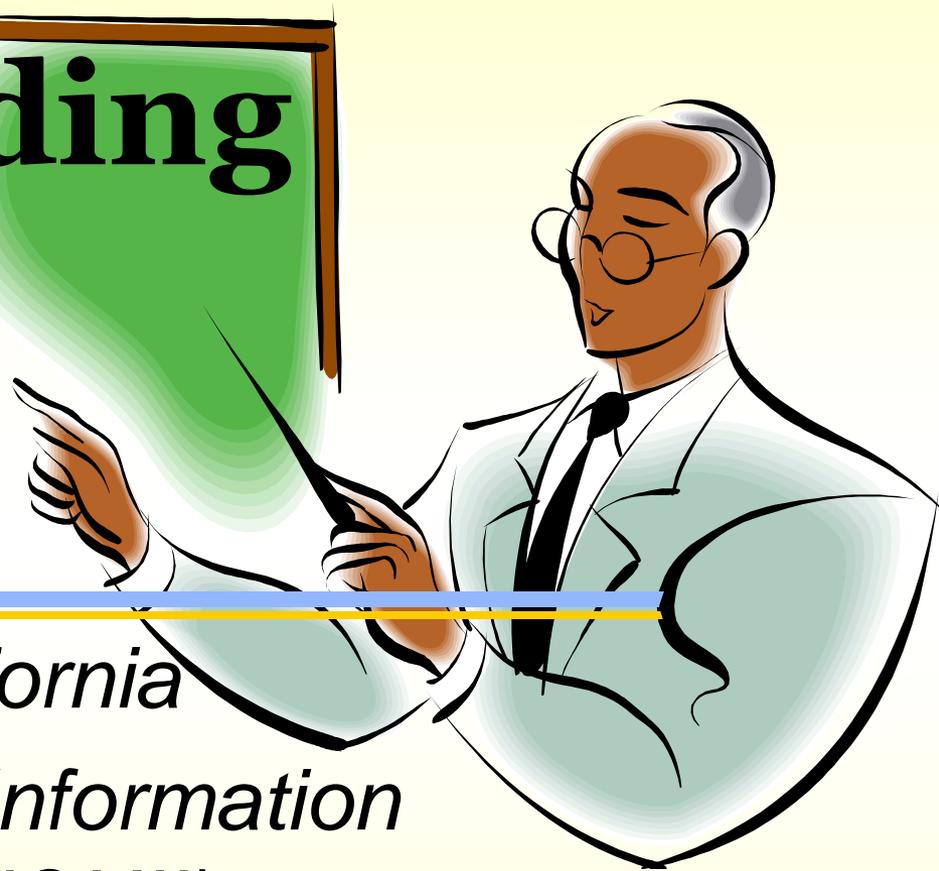


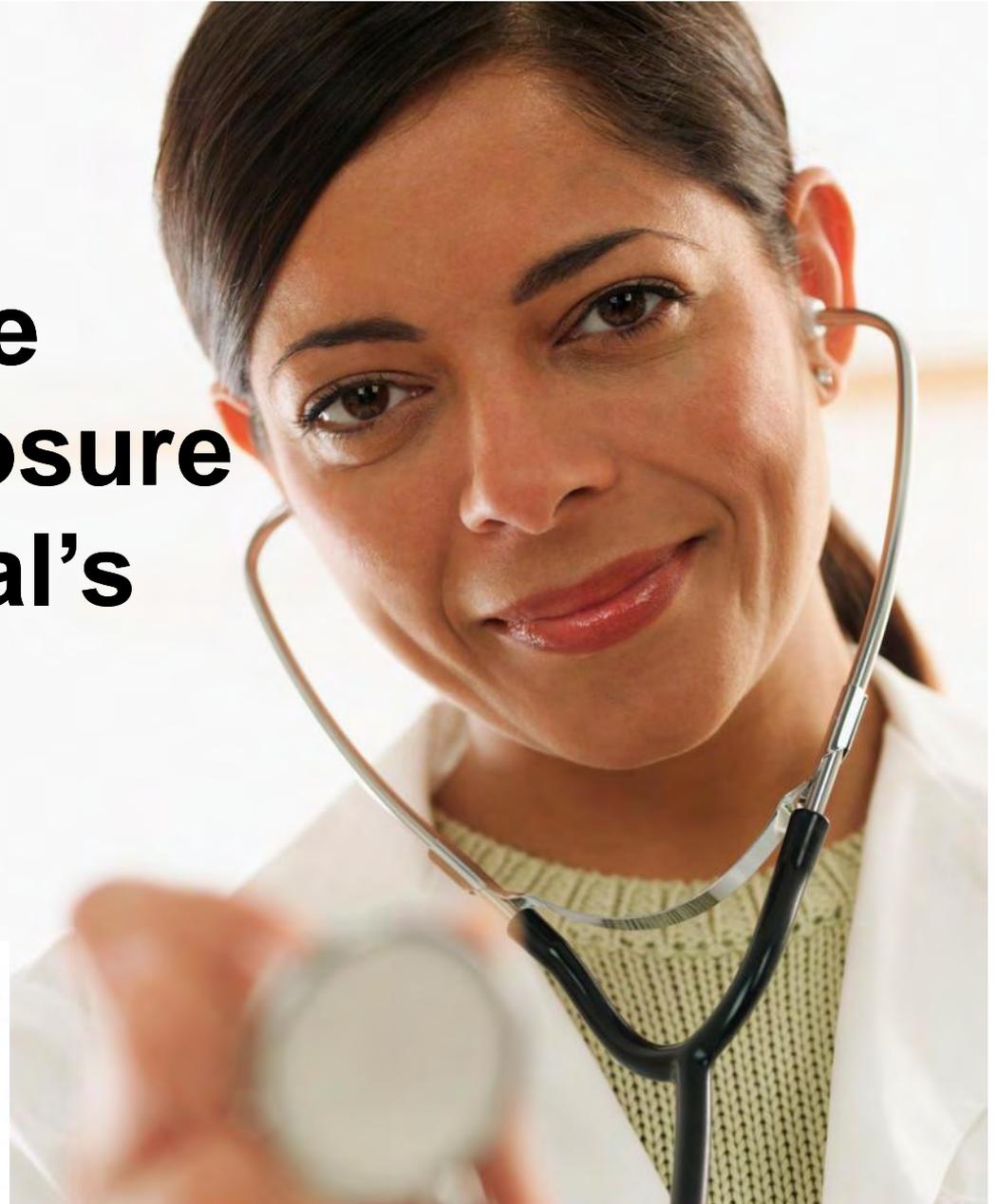
# Understanding AB211



*By the California  
Office of Health Information  
Integrity (CalOHII)*



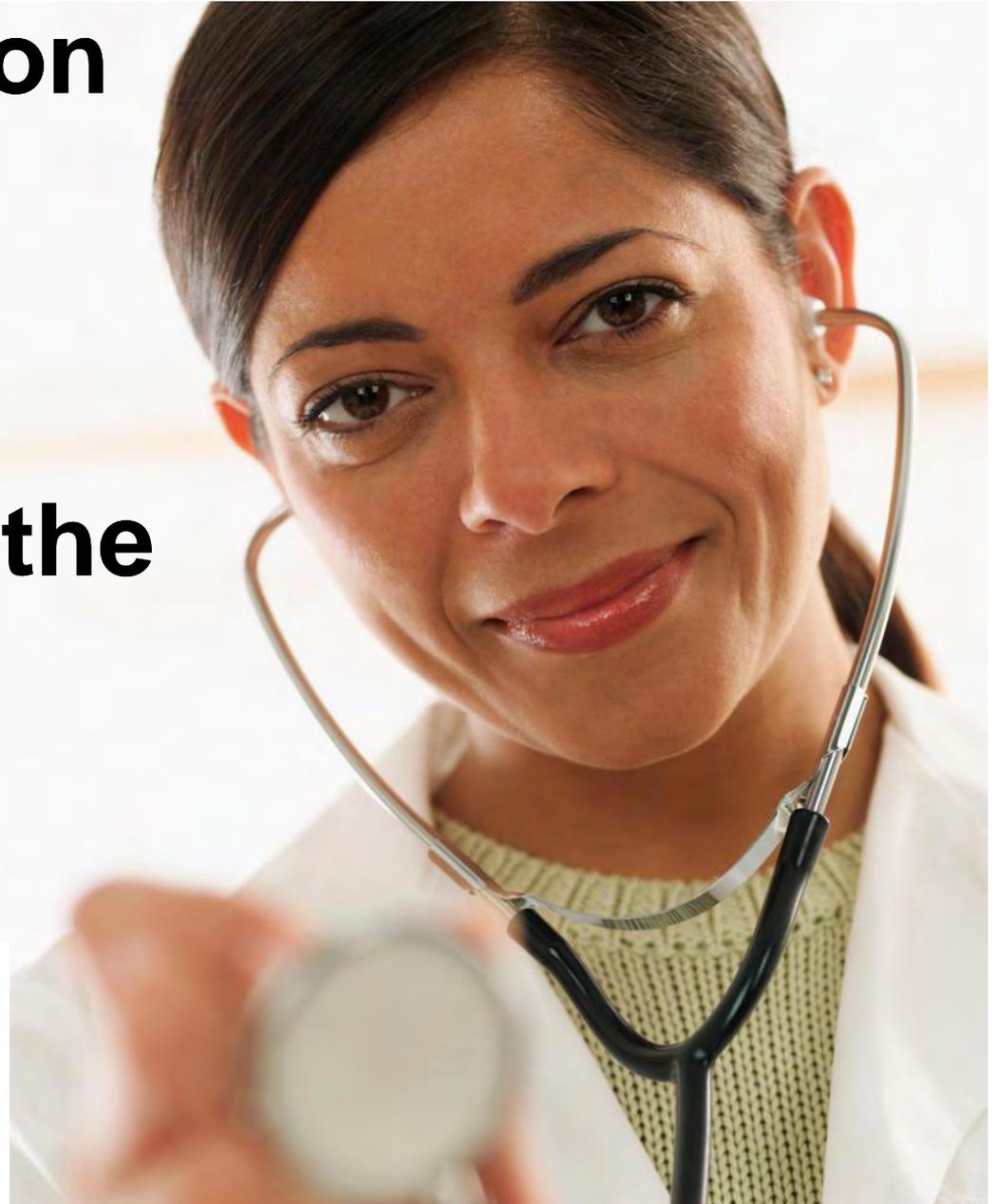
**Existing legal requirements concerning the use and disclosure of an individual's medical information**



# The California Constitution provides an inalienable right to privacy

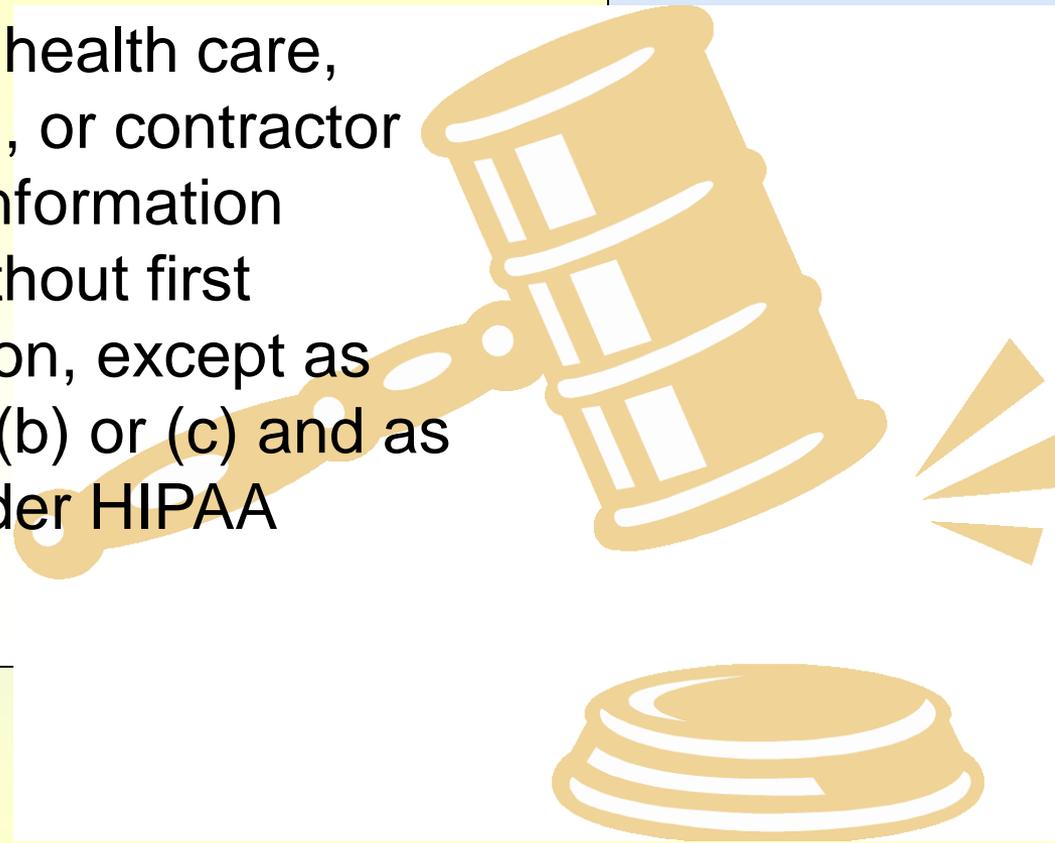
- *"All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."*
- *California Constitution, Article 1, Section 1*

# Current limits on the use and disclosure of medical information in the CMIA



## **The CMLA limits the access, use, or disclosure of an individual's medical information**

**56.10(a)** No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient...without first obtaining an authorization, except as provided in subdivision (b) or (c) and as allowed or specified under HIPAA



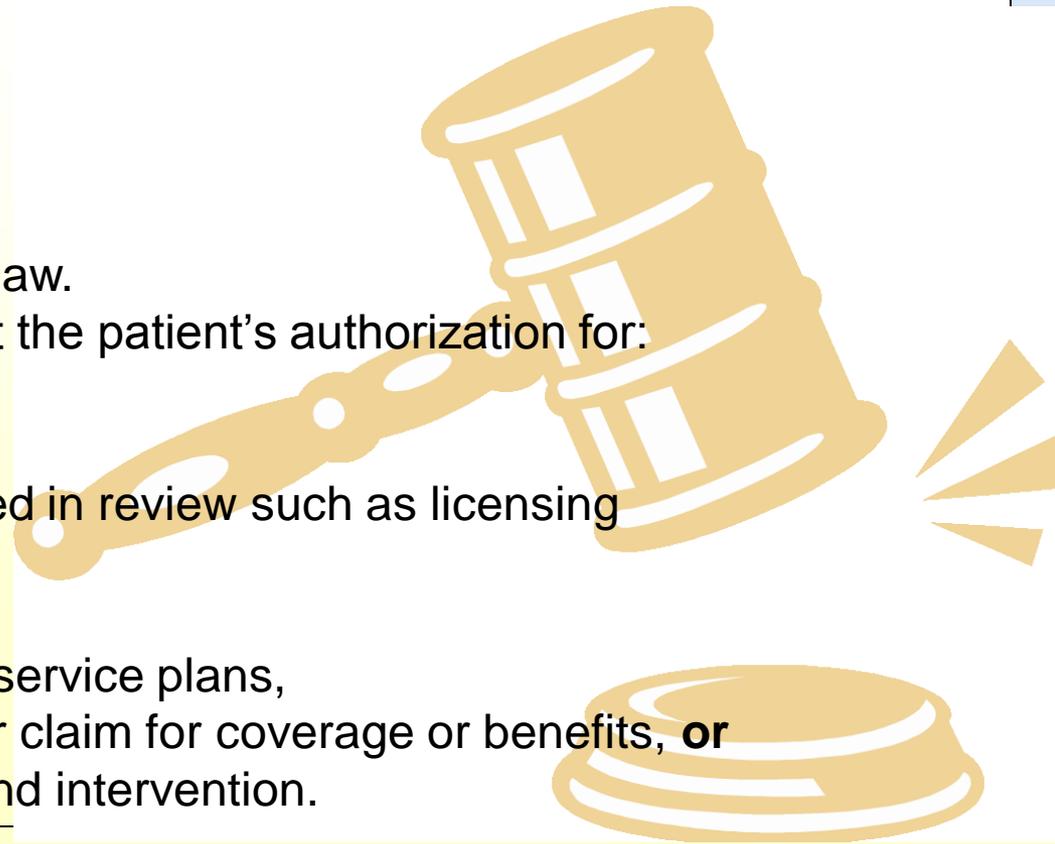
# The CMIA has some exceptions to the authorization requirements for the access, use, or disclosure of an individual's medical information

**56.10(b) Requires** disclosure without having to obtain authorization for :

- court orders,
- administrative adjudication,
- subpoenas,
- search warrant,
- coroners investigations, **or**
- where otherwise required by law.

**56.10(c) Allows** disclosure without the patient's authorization for:

- treatment and diagnosis,
- payment or billing,
- professional societies engaged in review such as licensing authorities,
- research,
- administration of health care service plans,
- determinations of eligibility for claim for coverage or benefits, **or**
- public health investigations and intervention.



# Existing penalty structure under the CMIA



# Existing CMLA penalties for violations by any person or entity



Any violation that results in economic loss *or* personal injury is:

- a misdemeanor *and*
- may incur liability for nominal damages of \$1000, *and*
- actual damages.

If the information is negligently disclosed, the liability may be up to \$2500, per violation.

**Existing Penalties for violations of  
the CMLA by persons not permitted  
to receive medical information.**



Any person or entity not permitted to receive medical information who knowingly and willfully obtains, discloses, or uses medical information without written authorization, shall be subject to a civil penalty of up to \$250,000 *per violation*.

**Existing penalties for violations  
of the CMIA by persons other than licensed  
health care professionals**



Any person or entity *not a licensed health care Professional* who knowingly and willfully obtains or uses medical information without written authorization, shall be subject to an administrative fine of:

- up to \$25,000 *per violation*,
- up to \$250,000 if the use is for *financial gain*

# Existing penalties that may be imposed by a licensing agency, certifying board, or court for a violation of the CMLA by licensed health care providers



Licensed health care providers that knowingly and willfully obtain, disclose, or use medical information shall be subject to a penalty of *up to*:

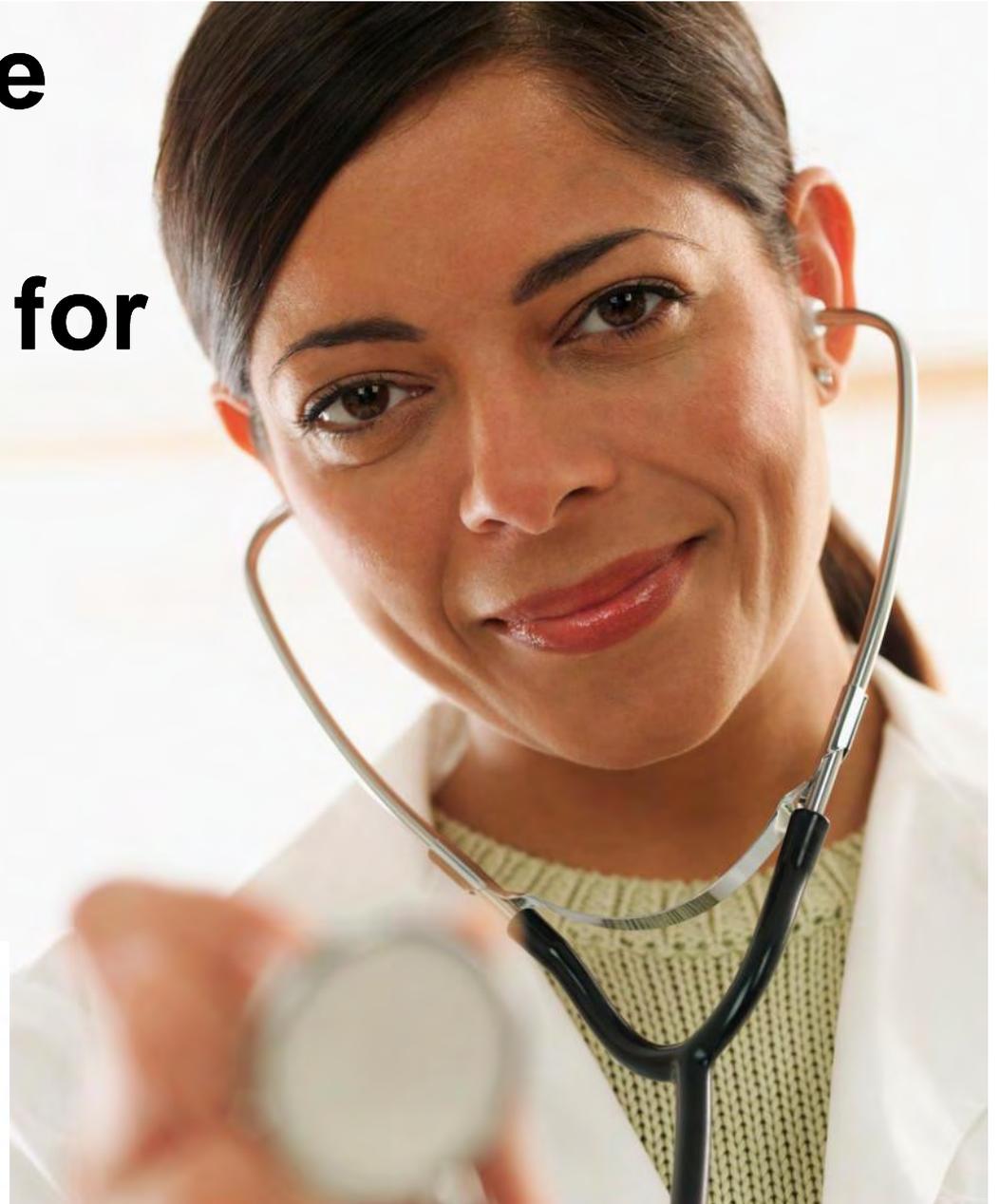
- \$2,500 for the first offense,
- \$10,000 for a second offense, and
- \$25,000 for each subsequent offense.

If the use is for financial gain, a licensed health care provider shall be subject to a penalty of *up to*:

- \$5,000 for the first offense,
- \$25,000 for a second offense, and
- \$250,000 for subsequent offenses.

*A licensed health care professional shall also be subject to disgorgement of any proceeds if the information is used for financial gain.*

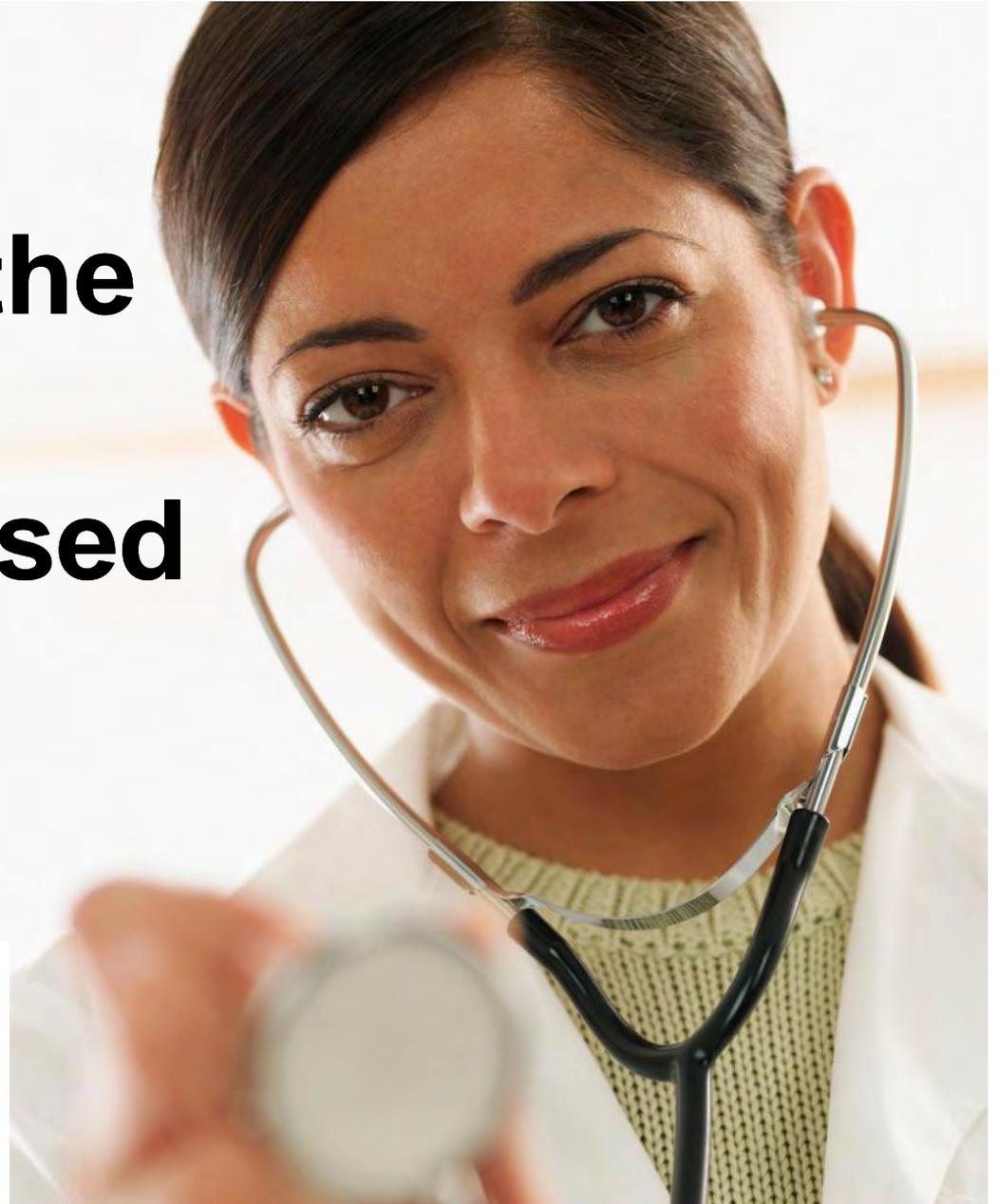
**The Civil Code  
also has  
requirements for  
medical  
information  
privacy  
protection**



# **The Civil Code has requirements for reporting if a breach occurs**

**Civil Code 1798.82 (a)** Any person or business that conducts business in California, and that owns or licenses computerized data that includes personal information, shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person

**In addition, the legislature recently passed SB 541**



**In addition to AB211, the legislature passed SB541 :**

A clinic, health facility, home health agency, or hospice licensed pursuant to Health and Safety Code Section 1204, 1250, 1725, or 1745 shall prevent unlawful or unauthorized access to, and use or disclosure of, patients' medical information, as defined in subdivision (g) of Section 56.05 of the Civil Code and consistent with Section 130203

# The Health and Safety Code requires the reporting of any unlawful or unauthorized access, use or disclosure to DPH

- A clinic, health facility, home health agency, or hospice licensed pursuant to Health and Safety Code Section 1204, 1250, 1725, or 1745 shall report any unlawful or unauthorized access to, or use or disclosure of a patient's medical information to the **Department of Public Health** no later than five days after the unlawful or unauthorized access, use, or disclosure has been detected by the clinic, health facility, home health agency, or hospice.

**The Department  
of Public Health  
may assess fines  
licensed facilities  
and make  
referrals for  
violations**



## **The Department of Public Health (DPH) may assess fines for violations**

After investigation, DPH may assess an administrative penalty for a violation of this section of up to **\$25,000 per patient** whose medical information was unlawfully or without authorization accessed, used, or disclosed, and up to **\$17,500 per subsequent occurrence** of unlawful or unauthorized access, use, or disclosure of that patient's medical information

# **The Department of Public Health may refer violations to CalOHHI**

- Notwithstanding any other provision of law, the DPH may refer violations of section 1280.15 to CalOHHI for enforcement.

**Health and Safety Code Section 1280.15**

**Since there are existing laws protecting medical privacy, why was there a need for AB211?**



# Why was there a need for AB211?

- News articles uncovered repeated breaches of confidential health records
- Enforcement authority under the CMIA was not well defined and discretionary
- An infrastructure for enforcing privacy and security of medical information was found to be lacking or non-existent

**What does  
AB211 do?**



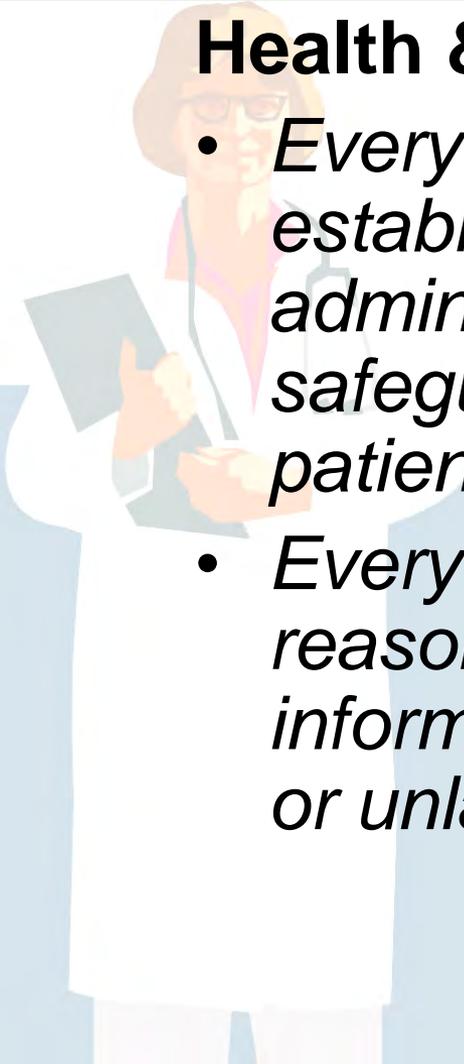
# **Establishes CalOHII**

**AB211 establishes the California Office of Health Information Integrity (CalOHII) to ensure the enforcement of state law mandating the confidentiality of medical information and to impose administrative fines for the unauthorized access, use or disclosure of medical information.**

# How does AB211 further privacy protections?

**Health & Safety Code 130203 requires:**

- *Every provider of health care shall establish and implement appropriate administrative, technical, and physical safeguards to protect the privacy of a patient's medical information*
- *Every provider of health care shall reasonably safeguard confidential medical information from any unauthorized access or unlawful access, use, or disclosure*



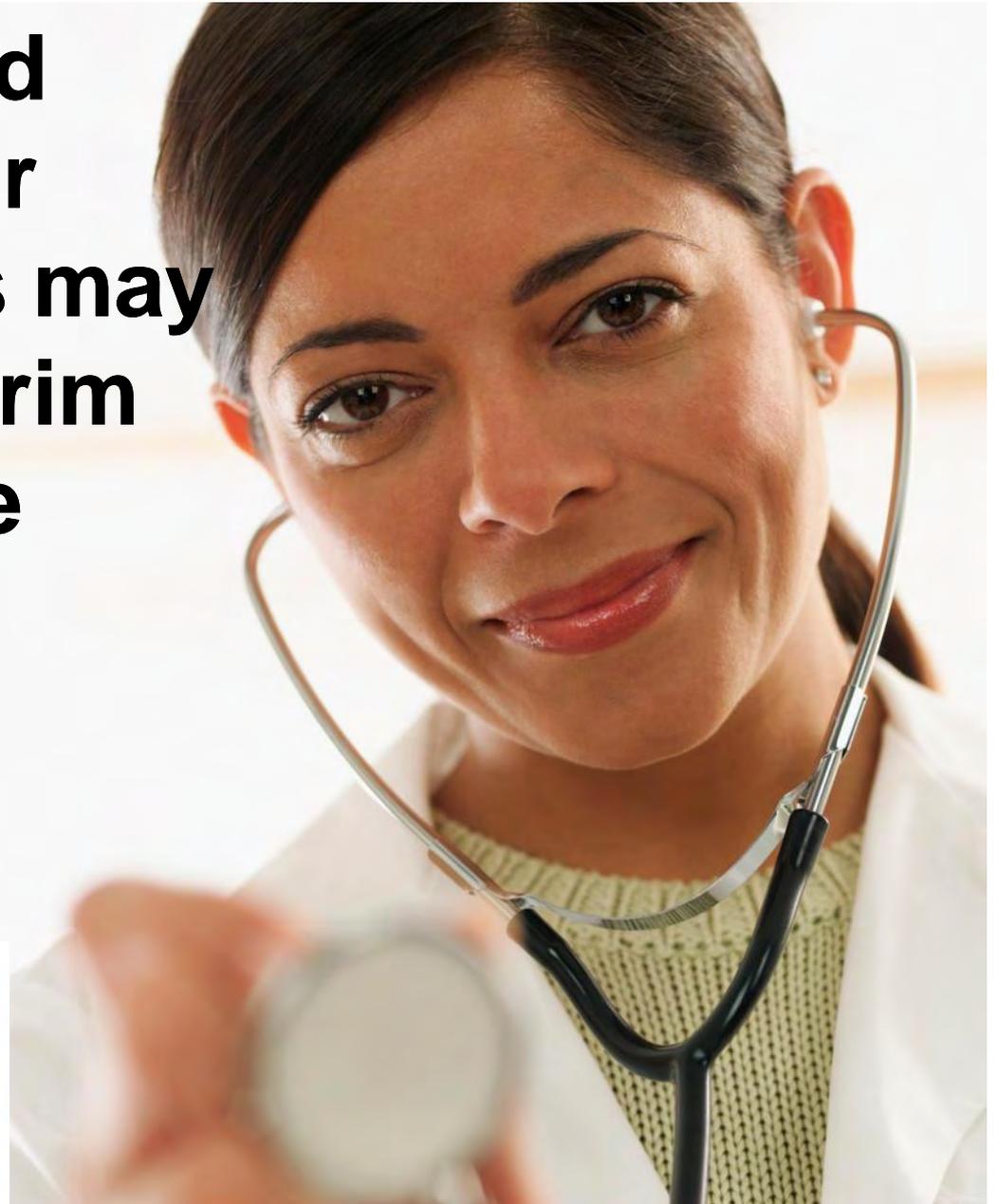
# **AB 211 Defines Unauthorized Access as:**

- The inappropriate review or viewing of patient medical information without a direct need for diagnosis, treatment, or other lawful use as permitted by the CMLA or by other statutes or regulations governing the lawful access, use, or disclosure of medical information

# **CalOHHI has Rulemaking Authority**

AB211 provides that CalOHHI shall adopt, amend, or repeal such rules and regulations as may be reasonable and proper to carry out the purposes and intent of this division, and to enable the authority to exercise the powers and perform the duties conferred upon it by this division not inconsistent with any other provision of law.

**HIPAA safeguard  
requirements for  
covered entities may  
serve as an interim  
guideline for the  
safeguard  
requirements  
CalOHII adopts**



# Administrative safeguards

Policies, procedures and staffing processes that represent active operating measures to protect the privacy of medical information.

Examples of administrative safeguards are:

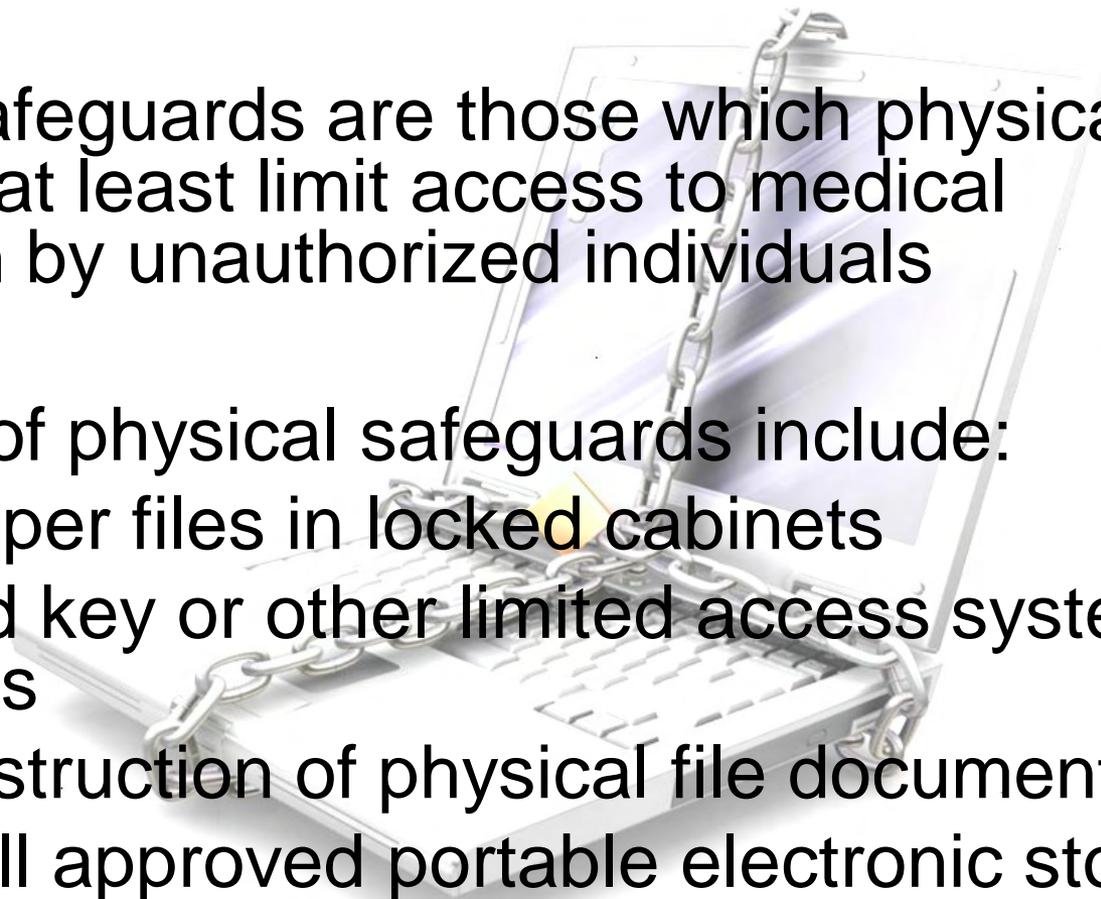
- Providing privacy training
- Developing a complaint process for responding to privacy issues and complaints
- Establishing sanctions for violations the privacy laws or regulations

# Physical safeguards

Physical safeguards are those which physically prevent or at least limit access to medical information by unauthorized individuals

Examples of physical safeguards include:

- Storing paper files in locked cabinets
- Using card key or other limited access systems for buildings
- Proper destruction of physical file documents
- Keeping all approved portable electronic storage media in locked rooms

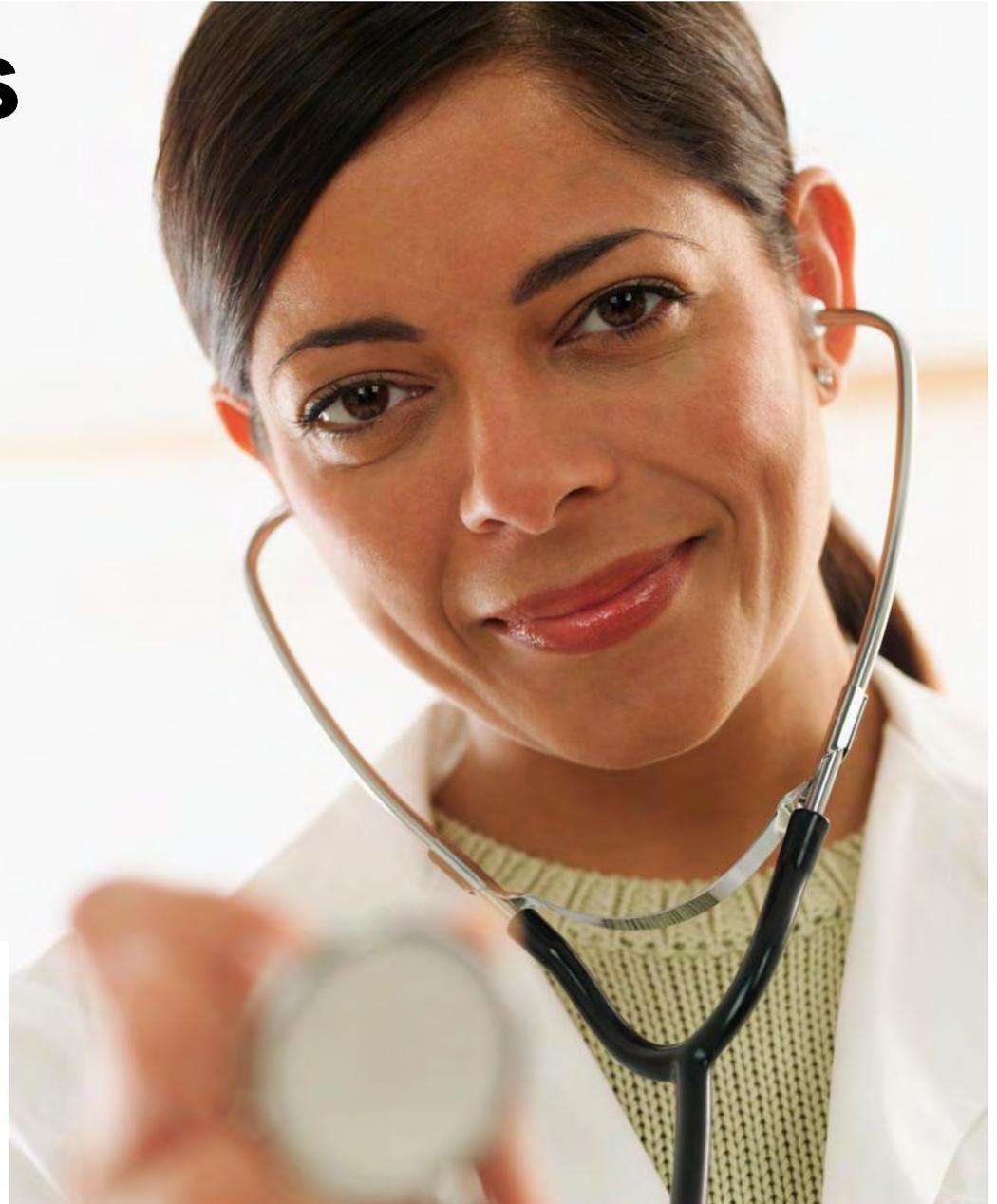


# Technical safeguards

IT applications, usually software, designed to control access to electronic data and protect the privacy and integrity of electronic medical information. Examples of technical safeguards are:

- Encryption
- Password protection
- Tracking and monitoring access

**What actions  
may CalOHII  
take for  
violations?**



## CalOHHI may assess Administrative fines



Upon referral from DPH, CalOHHI may assess an administrative fine against any person or any provider of health care, whether licensed or unlicensed, for any violation of this division in an amount as provided in the CMIA

- Proceedings shall be held in accordance with the Administrative Procedures Act
- May not assess against a clinic, health facility, agency, or hospice licensed under the Health and Safety Code
- May not assess against a business organized to maintain medical information, as defined in Civil Code section 56.06

# CalOHII may refer a case for further investigation



Notwithstanding any other provision of law, the director may send a recommendation for further investigation or discipline to the relevant licensing authority.

CalOHII may also recommend further action to be taken by any one of the following entities:

- Attorney General
- District attorney
- County counsel
- City attorney
- Licensing agency or certifying board

**Who is affected  
by AB211?**

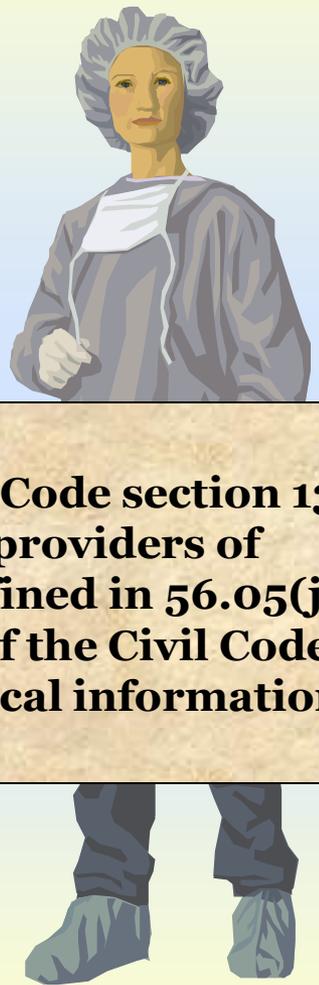


# Who are the providers subject to AB 211?

## Health Care Professionals affected by AB 211



- Acupuncturists
- Chiropractors
- Dentists
- EMTI, EMTII and Paramedics
- Nurses
- Occupational therapists
- Opticians
- Optometrists
- Osteopaths
- Pharmacists
- Physician and surgeons
- Physician assistants
- Physical therapists
- Psychiatric technicians
- Psychologists
- Social workers
- Therapists
- Vocational nurses



**Health and Safety Code section 130203  
requires providers of  
health care as defined in 56.05(j) and  
section 56.06 of the Civil Code to  
protect medical information**

# Who are the providers subject to AB 211?

**Clinics**  
**Community care facilities**  
**Day care centers**  
**Emergency medical services**  
**Health care service plans**  
**Home health agencies**  
**Hospitals**  
**Hospices**  
**Long-term care facilities**  
**Mobile health care units**  
**Nursing homes**  
**Residential care facilities**  
**Skilled nursing and intermediate care facilities**  
**Tissue Banks**

**Health and Safety Code section 130203 requires providers of health care as defined in 56.05(j) and section 56.06 of the Civil Code to protect medical information**

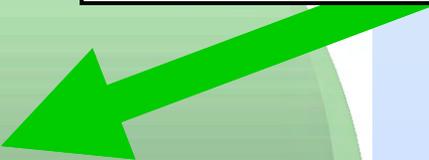
**Facilities affected by AB 211**



# Who are the providers subject to AB 211?

**Businesses organized for the purpose of maintaining medical information in order to make the information available to an individual or to a provider of health care at the request of the individual or a provider of health care, for the purposes of allowing the individual to manage his or her information, or for the diagnosis and treatment of the individual.**

**Other entities identified by AB 211**



**Health and Safety Code section 130203 requires providers of health care as defined in 56.05(j) and section 56.06 of the Civil Code to protect medical information**

**While all of these individuals and entities are affected by AB211, CalOHII does not have the authority to assess penalties against all of these individuals and entities**



# Who may CalOHII assess penalties against?

**Health and Safety Code section 130200 Authorizes CalOHII to impose administrative fines against providers of health care as defined in 56.05(j) and section 56.06 of the Civil Code upon referral from DPH**

**Acupuncturists  
Chiropractors  
Dentists  
EMTI, EMTII and Paramedics  
Nurses  
Occupational therapists  
Opticians  
Optometrists  
Osteopaths  
Pharmacists  
Physician and surgeons  
Physician assistants  
Physical therapists  
Psychiatric technicians  
Psychologists  
Social workers  
Therapists  
Vocational nurses**



**Health Care Professionals affected  
by AB 211**

# Who can't CalOHII assess a penalty against?

## Other entities identified by AB 211

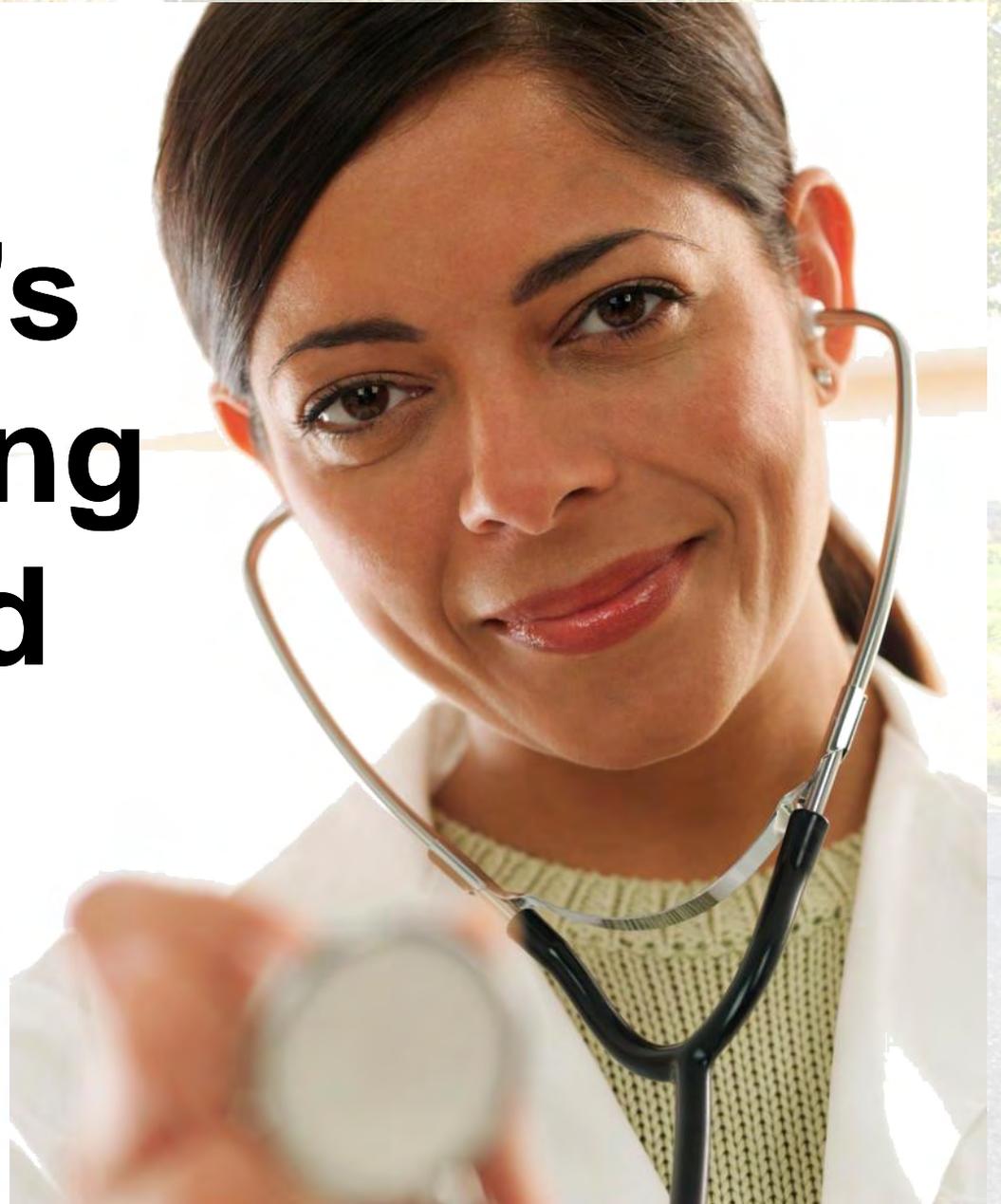
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Clinics  
Community care facilities  
Day care centers  
Emergency medical services  
Health care service plans  
Home health agencies  
Hospitals  
Hospices  
Long-term care facilities  
Mobile health care units  
Nursing homes  
Residential care facilities  
Skilled nursing and intermediate care facilities  
Tissue Banks

## Facilities affected by AB 211

Health and Safety Code section 130203 Provides that administrative fines may not be assessed by CalOHII against clinics, health facilities, agencies or hospices licensed pursuant to section 1204, 1250, 1725, or 1745 of the Health and Safety Code

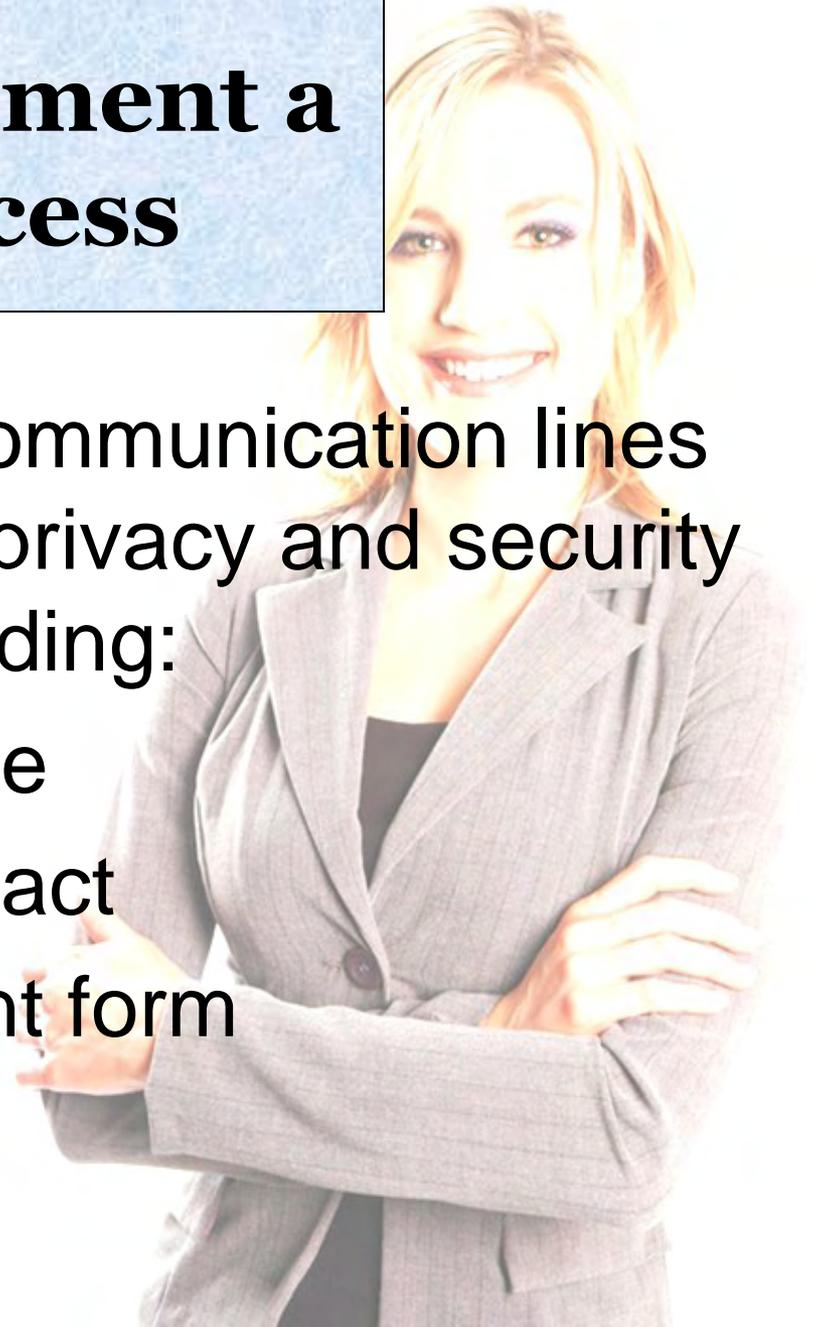
# CalOHII's Role Going Forward



# **Develop and Implement a Complaint Process**

CalOHII will establish communication lines for the public to submit privacy and security breach complaints including:

- Toll-free telephone line
- Website or email contact
- FAX or send complaint form



# **CalOHII will act on referrals from DPH**

Upon receipt of a referral from the DPH, CalOHII may:

- Assess the complaint and investigate as appropriate
- Impose an administrative fine against any person or any provider of health care for any violation of the CMIA as provided in Section 56.36 of the Civil Code

# Questions concerning AB211 and CalOHII?



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*For any additional questions please contact Eric Morikawa*

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(916)651-6905