

Can I Share That? Ask a Lawyer.

3:15PM EST | November 17th, 2020 | 2020 SyS Symposium

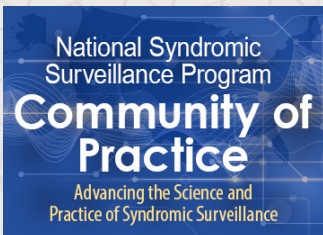
Moderated by Deborah Gould, PhD, MS – CDC/NSSP

Speakers:

Rachel Hammond, CIPP/G/US, HCISPP, CIPM – New Jersey Department of Health

Matthew Penn, JD, MLIS – CDC/Office of Public Health Law Services

Carrie Waggoner, JD – The Network for Public Health Law



Council of State and Territorial Epidemiologists



Deborah Gould, PhD, MS
CDC/NSSP



Rachel Hammond, CIPP/G/US, HCISPP, CIPM
New Jersey Department of Health



CSTE Syndromic Surveillance Symposium

Symposium Track: Data Sharing

Symposium Session: No 8.

“Can I Share That? Ask the Lawyers.”



Philip D. Murphy
Governor

Sheila Oliver
Lt. Governor



Shereef Elnahal, MD, MBA
Commissioner

CSTE Syndromic Surveillance Symposium

Rachel Hammond, JD, CIPP/G/US, HCISPP, CIPM
Data Privacy Officer
New Jersey Department of Health

The information provided does not, and is not intended to, constitute legal advice.
All information and content is for general informational purposes only.



Data Sharing Overview

- **Data Sharing**
- **State Public Health Agency**
- **Privacy Officer Role**
- **Privacy and Data Sharing in Practice**
- **Strategies & Collaboration**

Data Sharing Strategies

Strategies to Use when Approaching Privacy Officer/Legal Office to Facilitate and Encourage Responsible Data Sharing

- **Laws/Rules**
- **Operational Details**
- **Obtain Operational Approval**

Data Sharing Collaboration

How can Sys Managers and Data Analysts Support and Collaborate with Privacy Officer/Legal Office to Facilitate Data Sharing?

- **Know the Privacy Officer/Legal Office & Chief Information Security Officer**
- **Educate the Privacy Officer/Legal Office**
- **Request the Privacy Officer to Provide Specialized Training**
- **Involve the Privacy Officer/Legal Office Early**

Questions

Thank you!

Rachel Hammond, JD, CIPP/G/US, HCISPP, CIPM
Data Privacy Officer





Matthew Penn, JD, MLIS
CDC/Office of Public Health Law Services





Information pathways

Matthew Penn

Director, Public Health Law Program

Center for State, Tribal, Local, and Territorial Support

CDC

November 2020

Disclaimer

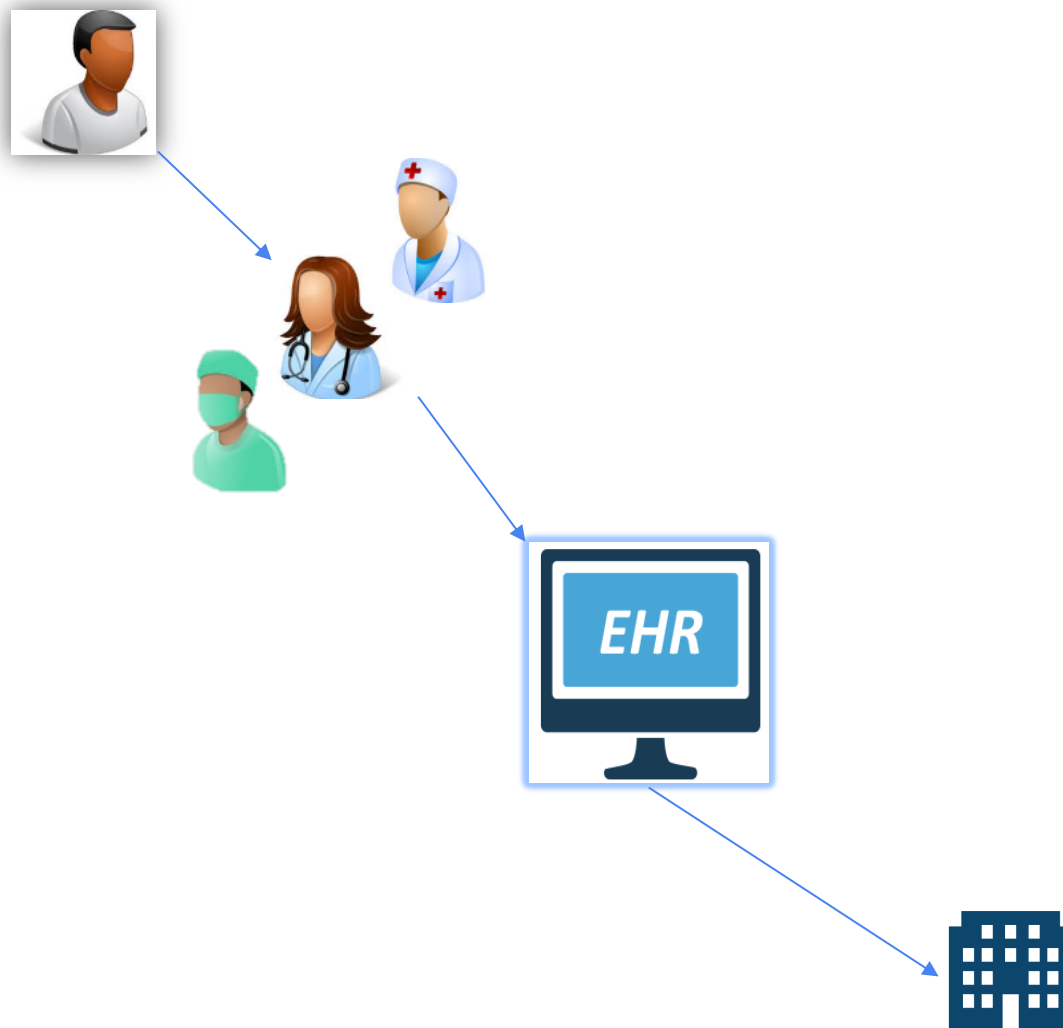
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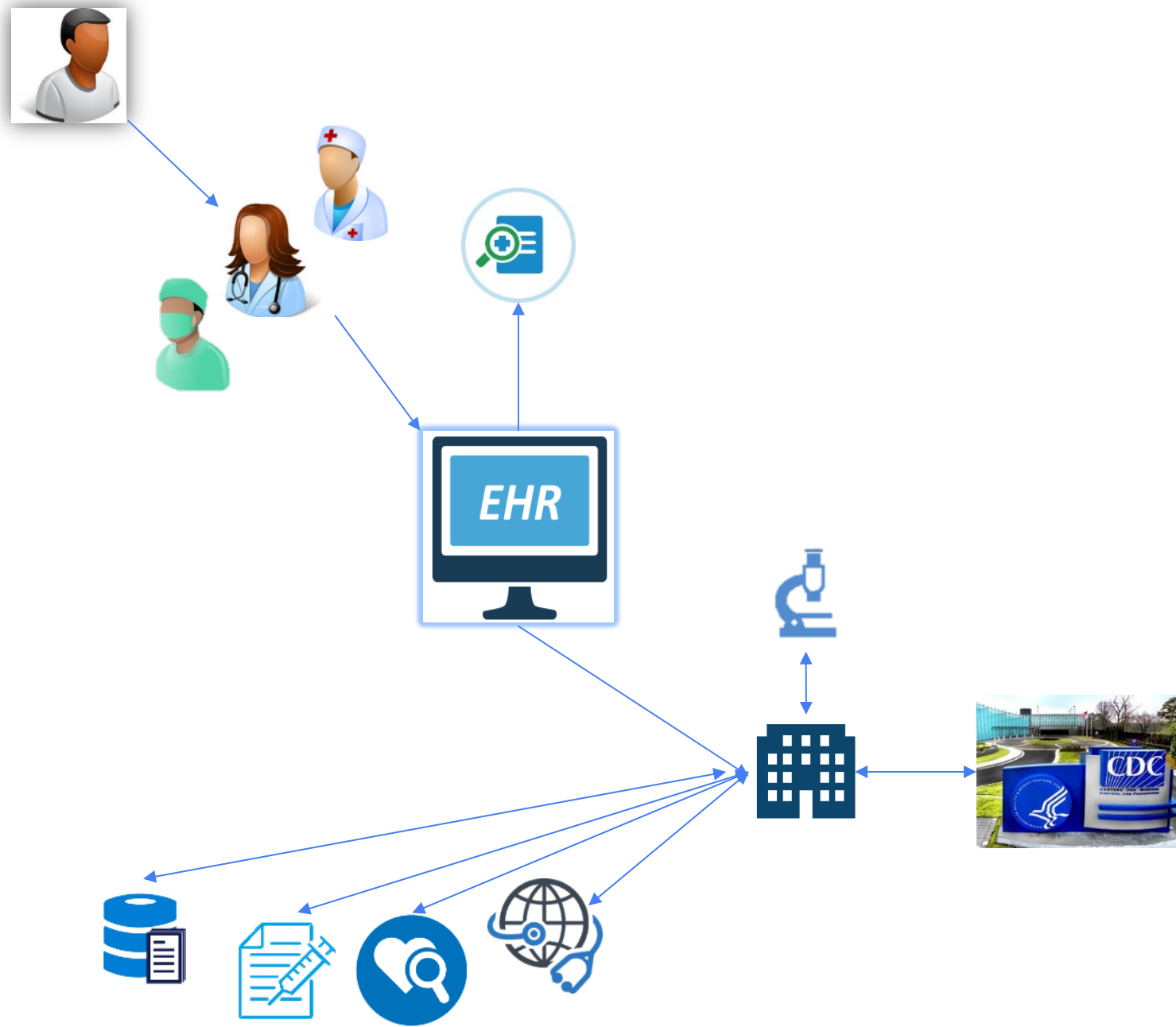




Considerations

- **Guidance on when and how federal, state, and local data privacy/confidentiality laws apply will vary by/within jurisdiction:**
 - What entity has the data?
 - What entity wants the data?
 - What is the purpose of the release of data?
 - What is contained in the data?





Health Data Life Cycle Framework

- Health data have a life cycle from creation to destruction
- Life cycle matters—applicable laws change as data move through their cycles
- The life cycle framework is made up of
 - Data fields
 - Information points
 - Information pathways

Health Data Life Cycle Framework (cont.)

- **The data fields**
 - The identity of the data itself
- **An information point**
 - An entity along a pathway where data is collected, secured, used, or released
- **An information pathway**
 - The route that data takes between custodians, between a holder and requestor

Health Data Life Cycle Framework (cont.)

■ The data fields

- The type of data directly affects what laws apply to the data
- This applies at the topical level and “demographic” level
- Topic
 - Is the data about a particular condition?
 - For example, HIV data will be treated differently than TB and diabetes data
- “Demographics”
 - Is the data personally identifiable?
 - If yes, many more protections will apply

Health Data Life Cycle Framework (cont.)

■ An information point

- An entity along a pathway where data is collected, secured, used, or released
- Who holds the data being requested and who is doing the requesting?
- Data held by a hospital will be treated very differently than data held by a health department and school
- Both points are important—the holder of the data ***and*** the receiver
 - Hospital to public health
 - Hospital to law enforcement

Health Data Life Cycle Framework (cont.)

- **An information pathway**

- The route that data takes between holder and requestor
- Pathways can differ, even between the same points
- For example,
 - Hospital to law enforcement for general criminal investigation
 - Hospital to law enforcement for reporting of possible child abuse and neglect

Before the train leaves any station, ask–

- Who holds the data?
- Whose data are being held?
- What do the data contain?
- Why were the data collected?
- Why were the data requested for release?
- Who requested the data?



For more information, contact CDC
1-800-CDC-INFO (232-4636)
TTY: 1-888-232-6348 www.cdc.gov

The findings and conclusions in this report are those of the authors and do not necessarily represent the official position of the Centers for Disease Control and Prevention.





Carrie Waggoner, JD

The Network for Public Health Law





Framework for Sharing Public Health Surveillance Data

Carrie Waggoner, JD, Senior Attorney
The Network for Public Health Law – Mid-States Region

CSTE 2020 Syndromic Surveillance Symposium,
November 17, 2020

About the Network for Public Health Law

At no cost, the Network provides public health legal support:

- » Technical assistance
- » Training and resources
- » Opportunities to build connections
- » Visit www.networkforphl.org
- » Join the Network! (it's free)



The Fine Print



This presentation is for informational purposes only. It is not intended as a legal position or advice from the presenters or their employers.

For legal advice, attendees should consult with their own counsel.

Law governs every aspect of data

Collection

Use

Sharing

Protection

Law friend or foe?

- How does law help us to do our job?
- How is law a barrier?

Impact of HIPAA on public health collection & use of data

HIPAA Privacy

Health information



When a health care provider refuses to provide access (without an authorization)

- » **Written document stating authority, explaining that HIPAA does not impact public health's authority**
- » **Covered entity may rely on government's written statement regarding its authority, or if written statement impracticable, on oral statement of such authority**



Healthcare **IT** News

Published on *Healthcare IT News* (<http://www.healthcareitnews.com>)

[Home](#) > Judge rules hospital must provide EMR access in hepatitis C case

Judge rules hospital must provide EMR access in hepatitis C case

By *Erin McCann, Associate Editor*

Created 11/02/2012

New Hampshire's Merrimack County Superior Court issued an order Thursday requiring Exeter Hospital to provide access to its electronic medical record database, so public health officials can continue their investigation into a major hepatitis C outbreak.

HIPAA Resources

» **Exeter Hospital, Inc. v Dr. Sharon Alroy-Preis, et al, Court Opinion:**

- <https://130e178e8f8ba617604b-8aedd782b7d22cfe0d1146da69a52436.ssl.cf1.rackcdn.com/ehr-access-required-in-hepatitis-case-eresource-1-a-5267.pdf>
- Public health exception to HIPAA explained:
“HIPAA Privacy Rule and Public Health, Guidance from CDC and the U.S. Department of Health and Human Services”
<http://www.cdc.gov/mmwr/preview/mmwrhtml/m2e411a1.htm>

HIPAA Resources, cont.

» **Explanation that HIPAA does not lessen public health authority:**

- Health Information & the Law Myth-Busters, MYTH: Health care providers must obtain parent consent under HIPAA to share child vaccination records with a state immunization registry
<http://www.healthinfolaw.org/article/myth-buster-health-care-providers-must-obtain-parent-consent-under-hipaa-share-child-vaccina>
- Wisconsin memo to local health departments regarding reporting of animal bites and HIPAA
http://www.co.washington.wi.us/uploads/docs/CHN_Bite_Reporting_HI_PAA.pdf
- Colorado memo to health care providers regarding public health reporting and HIPAA
<https://drive.google.com/file/d/0B0tmPQ67k3NVTnVqeXpFbWNYNjA/view>

Data Use Agreements

» **Key terms to consider:**

- Who is permitted to use or receive the data
- Purpose of data sharing
- Permitted uses and disclosures of data
- Only use or disclosure as allowed in DUA or required by law
- Appropriate safeguards
- Reporting & responsibility for unauthorized uses or disclosures
- Agents/subcontractors agree to substantially the same terms
- Not re-identify the data or contact individuals (if applicable)

Data Use Agreements

» **Examples & Resources:**

- [Privacy Officer Q & A](#)
- [West Virginia DUA template & other privacy resources](#)
- [Network's Health Information & Data Sharing Resources](#)
- [Example Data Sharing Agreements](#)
- [IZ Gateway Project](#)

Get to know your privacy officer and legal counsel

- » **Be proactive! Engage early & often!**
- » **Help them understand your work and your needs**
- » **Come prepared with:**
 - Who → is data to be shared with?
 - What → data will be shared? Be specific!
 - Why → purpose of the data sharing?
 - When → expected duration of sharing?
 - How → (specifically) will it be shared & protected?



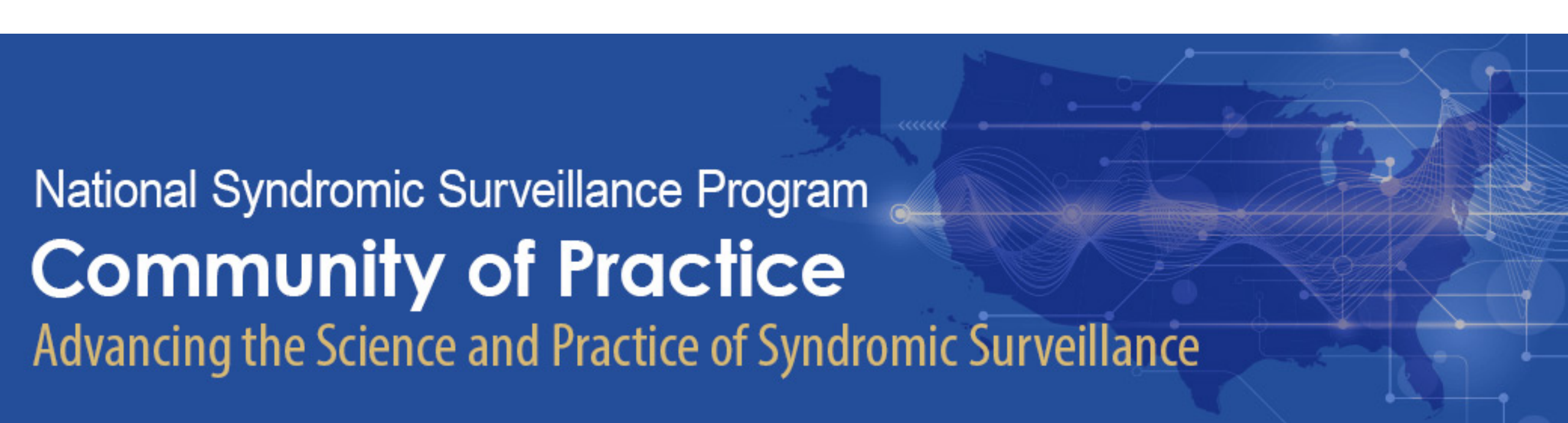
Thank you!

Carrie Waggoner, JD, Senior Attorney
Mid-States Region
cwaggoner@networkforphl.org

The Network for Public Health Law – National Office
7101 York Avenue South, Suite 270
Edina, MN 55435

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Advancing the Science and Practice of Syndromic Surveillance



Council of State and Territorial Epidemiologists

Block Schedule

Training

Methods

Innovation

Data Sharing

1:30-2PM EST	Keynote Address			
	...BREAK...			
2:15 - 3PM EST	Training: NSSP ESSENCE 101	Breakout: Spike, Alert, GO!	Breakout: Data Access and Integration	Breakout: Successful State-led Data Sharing Collaborations
		...BREAK...		
3:15-4PM EST		Lightning: Significant Findings	Roundtable: Bringing New Partners to the Table	Breakout: Can I Do That? Ask a Lawyer.
	...BREAK...			
4:15-5PM EST	Training: Custom Syndrome Definition in NSSP ESSENCE	Breakout: Match Point - Data Matching Across Sources		Roundtable: Establishing a Public Use Shared Data Set
	...BREAK...			
5:15-6PM EST	Virtual Happy Hour			