

*State of Alaska
Epidemiology*



Bulletin

*Recommendations
and
Reports*

Department of Health and Social Services
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HIPAA Privacy Rule Protects Public Health

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule expressly permits protected health information (PHI) to be shared for specified public health purposes. Without individual authorization, a covered entity may disclose to a public health authority (or to an entity working under a grant of authority from a public health authority) that is legally authorized to collect or receive the information for the purposes of preventing or controlling disease, injury, or disability including, but not limited to

- reporting of disease, injury, and vital events (e.g., birth or death); and
- conducting public health surveillance, investigations and interventions.

The HIPAA Privacy Rule permits covered entities to make disclosures that are required by other laws [45 CFR 160.203(c), 45 CFR 164.512 (b)], including laws that require disclosures for public health purposes.

Disclosures for Public Health Purposes

The Privacy Rule allows covered entities to disclose PHI to public health authorities when required by federal, tribal, State, or local laws [45 CFR 164.512(a)]. This includes State laws (or State procedures established under such law) that provide for receiving reporting of disease or injury, child abuse, birth, death, or conducting public health surveillance, investigation, or intervention.

For disclosures not required by law, covered entities may still disclose, without authorization, to a public health authority authorized by law to collect or receive the information for the purpose of preventing or controlling disease, injury, or disability, the minimum necessary information to accomplish the intended public health purpose of the disclosure [45 CFR 164.512(b)].

For example, to protect the health of the public, public health officials might need to obtain information related to persons affected by a disease. In certain cases, they might need to contact those affected to determine the cause of the disease to allow for actions to prevent further illness. The Privacy Rule continues to allow for the existing practice of sharing PHI with public health authorities who are authorized by law to collect or receive such information to aid them in their mission of protecting the health of the public. Examples of such activities include those directed at the reporting of disease or injury, reporting adverse events, reporting births and deaths, and investigating the occurrence and cause of injury and disease.

Although it is not a defined term in the HIPAA Privacy Rule, Department of Health and Human Services (DHHS) interpreted the phrase “authorized by law” to mean that a legal basis exists for the activity. Further, DHHS called the phrase “a term of art,” including both actions that are permitted and actions that are required by law [64 FR 59929, November 3, 1999]. This does not mean a public health authority at the federal, tribal, state, or local level must have multiple disease or condition-specific laws that authorize each collection of information. Public health authorities operate under broad mandates to protect the health of their constituent populations.

Minimum Necessary Standard

The Privacy Rule usually directs covered entities to limit the amount of information disclosed to the minimum necessary to achieve the specified goal [45 CFR § 164.514(d)(1)]. This requirement usually applies to disclosures to a public health agency. It would not apply, however, if the disclosure were required by law, authorized by the individual, or for treatment purposes. A covered entity may also reasonably rely on a public official’s determination that the information requested is the minimum necessary for the public health purpose.

Accounting for Public Health Disclosures

Although the Privacy Rule permits disclosures of PHI to public health authorities, covered entities must comply with certain requirements related to these disclosures. One such requirement is that a covered entity must be able to provide an individual, upon request, with an accounting of certain disclosures of their PHI.

The covered entity does not need to annotate each patient's medical record whenever a routine public health disclosure was made. The covered entity does need to inform patients generally that certain types of personal health information, required by law, will be disclosed to public health authorities.

HIPAA Privacy Rule and Public Health
Guidance from CDC and the U.S.
Department of Health and Human Services.
MMWR. 2003;52:1-20

Frequently Asked Questions

As a covered entity, can I share protected health information (PHI) with public health?

Yes. The HIPAA Privacy Rule allows covered entities to disclose PHI to public health authorities.

When I share PHI with public health authorities, do I have to have individual patient written authorization?

No. The HIPAA Privacy Rule does not require consent or authorization for disclosures for public health activities and purposes.

What are "public health activities"?

Public health authorities undertake activities designed to prevent or control disease, injury, or disability in the population. Activities include, but are not limited to, (1) receipt of reports of infectious diseases, medical conditions, injuries, vital events, child abuse, or other reportable events, (2) conduct of public health surveillance, (3) investigation of case(s) or outbreaks, and (4) implementation of interventions to prevent or lessen the severity of subsequent cases.

What is the definition of a "public health authority?"

"An agency or authority of the U.S., a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate."

If an outbreak investigation, surveillance activity, or registry data collection is not required by law, then can I share data with public health?

Yes. The HIPAA Privacy Rule does not require that each data collection activity be specified in a law. It expressly permits sharing PHI with public health authorities for public health purposes. HHS recognized that public health authorities operate under broad mandates to protect the health of their populations.

If data are requested for a public health program evaluation, which is not mentioned in the Privacy Rule, can I disclose them to public health?

Yes. The HIPAA Privacy Rule defines public health purposes broadly, and does not limit public health activities to those specified.

Can school-based surveys of health information continue to be done under the HIPAA Privacy Rule?

Yes. The HIPAA Privacy Rule does not cover information collected directly from individuals by persons/agencies/institutions that are not covered entities.

Does the Alaska Division of Public Health need to have a Memorandum of Agreement (MOA) with the National Centers for Disease Control and Prevention (CDC) before we share data?

No. Covered entities do not need MOAs with public health authorities when sharing PHI. In addition, the HIPAA Privacy Rule does not cover uses and disclosures of PHI by public health authorities (e.g., if the state health department, in its public role, were reporting surveillance data to CDC).

How are we to account for disclosures to public health?

The HIPAA Privacy Rule requires an accounting for disclosures made without authorization, including those to public health. However, ongoing, regular reporting to public health does not need to be logged in individual medical records. Instead of recording each disclosure, accounting can consist of a summary statement as to the nature of such regular reporting.

How do providers determine that public health requests for PHI meet standards for the minimum necessary data for this purpose?

Providers may reasonably rely on a public health official's determination that the information requested is the minimum necessary for the purpose.

(If you have questions or concerns, please contact Diane Ingle [Anchorage 269-3444 or Juneau 907-465-3186] or Bruce Scandling [Juneau 907-465-3486], HIPAA Privacy Rule Coordinators, Alaska Division of Public Health.)

Definitions:

HIPAA: Health Insurance Portability and Accountability Act of 1996.

Privacy Rule: Section of HIPAA addressing “Standards for Privacy of Individually Identifiable Health Information”.

Protected Health Information (PHI) is individually identifiable health information.

Covered Entity: Defined under the Privacy Rule as a health care provider (eg. physicians, hospitals, and clinics), health care clearinghouse, or health plan [45 CFR 160.103].

Public Health Authority (PHA): Broadly defined under the Privacy Rule as “an agency or authority of the U.S., a State, a territory, a political subdivision of a State or territory, or an Indian tribe, that is responsible for public health matters as part of its official mandate; or a person or entity acting under a grant of authority from, or contract with, such public agency to whom it has granted authority [45 CFR 164.501].

Additional Information

A copy of the State of Alaska booklet called “Conditions Reportable to Public Health” may be downloaded in PDF format from <http://www.epi.hss.state.ak.us/pubs/rtr.pdf>. It lists all diseases and conditions reportable in Alaska by providers and by laboratories as well as instructions in how to report cases. A summary of relevant Alaska Statutes pertinent to disease reporting and public health investigation is included.

The CDC publication “HIPAA Privacy Rule and Public Health” (MMWR Early Release April 11, 2003, Vol. 52) may be downloaded from http://www.cdc.gov/mmwr/pdf/other/m2_e411.pdf. For providers and other HIPAA covered entities, this document provides clarification of the use and disclosure of certain individually identifiable health information to Public Health Authorities.

STATE OF ALASKA

DEPARTMENT OF HEALTH & SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

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May 16, 2003

To Whom It May Concern:

The Alaska Division of Public Health is an agency of the State of Alaska Department of Health and Social Services and is conducting activities in its capacity as a public health authority as defined by the Health Insurance Portability and Accountability Act (HIPAA), Standards for Privacy of Individually Identifiable Health Information, Final Rule (Privacy Rule) [45 CFR § 164.501].

Pursuant to 45 CFR § 164.512(b) of the Privacy Rule, covered entities such as your organization may disclose, without individual authorization, protected health information to public health authorities "...authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions...."

The Alaska Division of Public Health is undertaking public health activities as described by 45 CFR § 164.512(b) and authorized by Alaska statute and regulation. The information being requested represents the minimum necessary to carry out the public health purposes of this project pursuant to 45 CFR § 164.512(d) of the Privacy Rule.

If you have questions or concerns regarding this matter, please contact the Division's HIPAA Privacy Rule Coordinators: in Anchorage, Diane Ingle at (907) 269-3444; or in Juneau, Bruce Scandling at (907) 465-3486.

Sincerely,



Joel Gilbertson
Commissioner

The Department of Health and Social Services is providing this letter to authorize sharing of protected health information under the HIPAA Privacy Rule to public health officials in Alaska.

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