Responses to legal questions about data sharing

QUESTION POSED

Is inter-jurisdictional sharing permitted or barred under a formal agreement or public health authority or informal agreement? Please provide a copy or hyperlink to the relevant legal agreements (i.e., templates), laws, rules, or other.

RESPONSES

Illinois (Stacey Hoferka)
Permitted.

Indiana, Marion County (Brittany Yarnell)
Formally prevented.
Our agreement with CDC to share with the NSSP BioSense ESSENCE.

Iowa, Linn County Public Health (Mechelle Carter)
Permitted.
MMC and LCPH BioSense 2 DUA. Covered by Other Health Agency Uses.
4))Data Set access and use section
a) Provider acknowledges and agrees that as part of BioSense 2.0, the data set may be used and/or disclosed for the following purposes.
III)Other health agency uses (local state and federal gov health agencies. other agencies consistent ...)
(1)To facilitate the interchange of information that can be used to coordinate responses and monitory events routinely and during a potential health event.
(2)For early detection...

Kansas (Greg Crawford)
Neither expressly permitted nor barred.

Michigan (Katie Arends)
Permitted.

Missouri (Fei Wu)
Permitted.
See relevant document at https://health.mo.gov/data/essence/pdf/hipaa.pdf, included for reference beginning on following page.

HOW DOES MISSOURI LAW PROTECT THESE DISCLOSURES?

In Missouri, there are a number of disclosures that health care providers are required by law to make. **These mandatory disclosures are not changed by HIPAA.** For example, hospitals/physicians must share information with the Missouri Department of Health and Senior Services (DHSS) for: communicable, environmental and occupational disease reporting (19 CSR 20-20.020); epidemiological studies (§192.067, RSMo); information about infant metabolic and genetic screenings (§191.331, RSMo); and information about quality of care and access to care (§192.068, RSMo). These are only a few of the mandatory disclosures that health care providers are required to make.

The information gathered from these required disclosures is still confidential. There are corresponding confidentiality requirements for these disclosures. §192.067, RSMo, requires that DHSS maintain confidentiality of information gathered from patients' medical records. This information can be released *only* in aggregate form that prevents the identification of a patient or physician, unless that information is being shared with another public health authority. §192.317 protects the information DHSS gains about infant metabolic and genetic screenings. Quality of care data is also not classified as public information, and cannot be released in a way that identifies any patient. (*See* §192.068, RSMo.)

RESOURCES

- ***Where can I find the full text of the Privacy Standards?***

Health Insurance Portability and Accountability Act of 1996 (HIPAA)
45 CFR Parts 160 and 164
Standards for Privacy of Individually Identifiable Health Information (Privacy Standards)

An unofficial version of the complete regulation text, as modified in August 2002, is available at
http://www.hhs.gov/ocr/hipaa/combinedregtext.pdf

- ***Is there a comprehensive internet site that provides additional guidance?***

http://www.hhs.gov/ocr/hipaa/

This links to the U.S. Department of Health and Human Services, Office for Civil Rights (OCR) website. The OCR is the entity charged with enforcing the HIPAA Privacy Standards, and they have issued guidance on this regulation, which can be found at this site.

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PUBLIC HEALTH AND HIPAA:

Legally Sharing Information with Public Health Agencies

This brochure is not intended to serve as legal advice, nor should it be considered an endorsement of the resources provided. If you have questions, be sure to contact your legal counsel to determine your own compliance with the law and appropriate policies and procedures.

HIPAA (the Health Insurance Portability and Accountability Act of 1996) was developed to address the efficiency and effectiveness of the health care system in the United States. Within HIPAA, the Administrative Simplification rules are a series of regulations that establish standards and protections for health care systems. Currently, only the rules for five provisions of the Administrative Simplification portion of HIPAA have been published. The first one is the "Standards for Electronic Transactions" with an effective date of October 16, 2003 for large plans, if they filed an extension. The second is the "Standards for Privacy of Individually Identifiable Health Information" (Privacy Standards) with an effective date of April 14, 2003. The third is the "Standard Unique Employer Identifier" with an effective date of July 30, 2004 for all covered entities, except small health plans. The fourth is the "Security Standards for the Protection of Electronic Protected Health Information" with an effective date of April 20, 2005 for all covered entities, except small health plans. The fifth is the "Standard Unique Health Identifier for Health Care Providers" with a compliance date of May 23, 2007 for all covered entities, except small health plans. Additional provisions will be published in the Federal Register over the coming months.

WHAT DOES THE PRIVACY RULE DO?

Although it does place many limits on the sharing of protected health information, the Privacy Rule allows for the existing practice of sharing protected health information with public health authorities that are authorized by law to collect or receive such information to aid them in their mission of protecting the health of the public.

This practice is described in the preamble to the actual Rule:

"The final rule continues to permit covered entities to disclose protected health information without individual authorization directly to public health authorities, such as the Food and Drug Administration, the Occupational Safety and Health Administration, the Centers for Disease Control and Prevention as well as state and local public health departments, for public health purposes…" [Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82,526 (2000) (to be codified at 45 C.F.R. pt. 160 and 164).]

"…section 1178(b) of the Act (Social Security Act) as explained in the NPRM (Notice of Proposed Rulemaking for the Privacy Rule), explicitly carves out protection for state public health laws. This provision states that: "(N)othing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth or death, public health surveillance, or public health investigation or intervention."…. [Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82,624 (2000) (to be codified at 45 C.F.R. pt. 160 and 164).]

IS AN AUTHORIZATION NEEDED TO SHARE INFORMATION WITH PUBLIC HEALTH?

The Privacy Rule [*See* 45 C.F.R. §160 and §164] provides for a number of situations in which protected health information may be shared without a patient's authorization.

The regulations say:

"A covered entity may use or disclose protected health information **without the written authorization of the individual** as described in 164.508 …" (**emphasis added**) in the following situations:

(a) Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law…. (*See* §164.512(a))

(b) Uses and disclosures for public health activities.

(1) Permitted disclosures. A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph to:

- (i) A public health authority that is 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; …
- (ii) A public health authority … authorized by law to receive reports of child abuse or neglect;
- (iii) A person subject to the jurisdiction of the Food and Drug Administration with respect to an FDA-regulated product or activity… *See* §164.512(b))

Nebraska (Sandra Gonzalez)
Permitted.
Inter-jurisdictional sharing is permitted, however a Data Users Agreement is required.
See Nebraska's Syndromic Surveillance statute 71-552 (https://nebraskalegislature.gov/laws/statutes.php?statute=71-552), and Revised Statute 71-503.01 (https://nebraskalegislature.gov/laws/statutes.php?statute=71-503.01), included for reference beginning on following page.

71-552. Syndromic surveillance program; development; department set standards for reporting by hospitals; additional powers of department; use, confidentiality, and immunity; failure to make report; grounds for discipline.

(1) For purposes of protecting the public health and tracking the impact of disease prevention strategies intended to lower the cost of health care, the Department of Health and Human Services shall develop a syndromic surveillance program that respects patient privacy and benefits from advances in both electronic health records and electronic health information exchange. The syndromic surveillance program shall include the monitoring, detection, and investigation of public health threats from (a) intentional or accidental use or misuse of chemical, biological, radiological, or nuclear agents, (b) clusters or outbreaks of infectious or communicable diseases, and (c) noninfectious causes of illness.

(2) The department shall adopt and promulgate rules and regulations setting standards for syndromic surveillance reporting by hospitals. The standards shall specify (a) the syndromic surveillance data elements required to be reported for all encounters, which shall include at a minimum the date of the encounter and the patient's gender, date of birth, chief complaint or reason for encounter, home zip code, unique record identifier, and discharge diagnoses and (b) the manner of reporting.

(3) The department may require, by rule and regulation, syndromic surveillance reporting by other health care facilities or any person issued a credential by the department.

(4) The department shall establish, by rule and regulation, a schedule for the implementation of full electronic reporting of all syndromic surveillance data elements. The schedule shall take into consideration the number of data elements already reported by the facility or person, the capacity of the facility or person to electronically report the remaining elements, the funding available for implementation, and other relevant factors, including improved efficiencies and resulting benefits to the reporting facility or person.

(5) The use, confidentiality, and immunity provisions of section 71-503.01 apply to syndromic surveillance data reports.

(6) Failure to provide a report under this section or the rules and regulations is grounds for discipline of a credential issued by the department.

Source: Laws 2011, LB591, § 1.

71-503.01. Reports required; confidentiality; limitations on use; immunity.

(1) Whenever any statute of the state, any ordinance or resolution of a municipal corporation or political subdivision enacted pursuant to statute, or any rule or regulation of an administrative agency adopted and promulgated pursuant to statute allows medical practitioners or other persons to prescribe, provide, or dispense prescription drugs pursuant to sections 71-503.02 and 71-503.03 or requires medical practitioners or other persons to report cases of communicable diseases, including sexually transmitted diseases and other reportable diseases, illnesses, or poisonings or to give notification of positive laboratory findings to the Department of Health and Human Services or any county or city board of health, local public health department established pursuant to sections 71-1626 to 71-1636, city health department, local health agency, or state or local public official exercising the duties and responsibilities of any board of health or health department, such reports or notifications and the resulting investigations and such prescription, provision, or dispensing of prescription drugs and records pertaining thereto shall be confidential except as provided in this section, shall not be subject to subpoena, and shall be privileged and inadmissible in evidence in any legal proceeding of any kind or character and shall not be disclosed to any other department or agency of the State of Nebraska.

(2) In order to further the protection of public health, such reports, notifications, and prescription, provision, or dispensing of prescription drugs may be disclosed by the Department of Health and Human Services, the official local health department, and the person making such reports or notifications to the Centers for Disease Control and Prevention of the Public Health Service of the United States Department of Health and Human Services or its successor in such a manner as to ensure that the identity of any individual cannot be ascertained except as required for delivery of such prescription drugs pursuant to sections 71-503.02 and 71-503.03. To further protect the public health, the Department of Health and Human Services, the official local health department, and the person making the report or notification may disclose to the official state and local health departments of other states, territories, and the District of Columbia such reports and notifications, including sufficient identification and information so as to ensure that such investigations as deemed necessary are made.

(3) The appropriate board, health department, agency, or official may: (a) Publish analyses of reports, information, and the notifications described in subsection (1) of this section for scientific and public health purposes in such a manner as to ensure that the identity of any individual concerned cannot be ascertained; (b) discuss the report or notification with the attending physician; and (c) make such investigation as deemed necessary.

(4) Any medical practitioner, any official health department, the Department of Health and Human Services, or any other person making such reports or notifications or prescribing, providing, or dispensing such prescription drugs pursuant to sections 71-503.02 and 71-503.03 shall be immune from suit for slander or libel or breach of privileged communication based on any statements contained in such reports and notifications or pursuant to prescription, provision, or dispensing of such prescription drugs.

Source: Laws 1967, c. 441, § 2, p. 1381; Laws 1986, LB 763, § 3; Laws 1988, LB 1012, § 8; Laws 1991, LB 703, § 25; Laws 1994, LB 819, § 3; Laws 1996, LB 1044, § 494; Laws 1997, LB 197, § 4; Laws 2005, LB 301, § 13; Laws 2007, LB296, § 382; Laws 2013, LB528, § 3.

Ohio (John Hubbard)
Informally not accepted.

Wisconsin (Daniel Bedford)
Neither expressly permitted nor barred.