

State Analysis Guide

Sharing Information between Public Health and Law Enforcement

This *State Analysis Guide* is intended to assist state health agency staff and legal counsel with locating and analyzing their state's laws, rules, policies, and implementation plans that govern information sharing between public health agencies and law enforcement. Space is provided on the document to insert references or summaries of appropriate state or local authorities. Because each state's law is unique, this guide may not identify all issues that arise in the course of analyzing a state's law. **The language and requirements of specific state/local laws, regulations, ordinances, rules, policies, guidances, case law, and other sources of legal authority overrule this general analysis guide in all instances. This resource is for informational purposes only and is not intended as a substitute for professional legal or other advice.**

Issues for Analysis	State/Local Information
Disclosure of Information	
Identify authority for public health agencies to share necessary information with law enforcement; for each area, identify any prerequisites, conditions, or limitations (e.g., consent required, de-identified information only, state of emergency declaration, minimum necessary, etc.):	
General authority.	
Disease specific.	
Other conditions (e.g., poisonings, radiologic events, suspected acts of bioterrorism).	
Catch-all (e.g., unusual occurrence of a disease, infection, or condition).	
Syndromic surveillance.	
Public health workforce.	
Other.	

Issues for Analysis		State/Local Information
Identify authority that allows sharing or limits sharing of information by public health agencies with law enforcement:		
	General authority.	
	Data practices laws.	
	Health information privacy laws.	
	Right to privacy statutory or common law.	
	Other.	
Identify state authorities that mandate information sharing with law enforcement.		
If state law does not sufficiently allow information to be shared when necessary to protect the public, identify options to address rare but compelling circumstances where disclosure is indicated.		
Identify components of public health agency covered by HIPAA and applicable HIPAA exceptions to share information with law enforcement for emergency preparedness and response purposes.		
Emergency Declarations		
Identify the state's statute(s) regarding emergency declarations and powers. Identify any provisions that apply to authority to share information with law enforcement or might be used to allow sharing as necessary to respond to an emergency.		

Issues for Analysis		State/Local Information
Coordination with Law Enforcement		
Identify authority to conduct joint investigations and collect evidence; identify any prerequisites, conditions, or limitations.		
Identify and review policy and procedure related to public health investigations and information/specimen collections to ensure that the process comports with law enforcement's Fourth and Fifth Amendment requirements.		
	Chain of custody.	
	Evidence obtained as part of a legitimate public health investigation.	
	Voluntary consent.	
	Awareness of "in custody" interviews or joint interview conditions; need for sensitivity with law enforcement presence and proper actions/protocol.	
	Identify state law regarding exceptions to warrant and probable cause requirements that may apply to public health. Provisions may be included in the state's constitution, statutes, or case law. Possible exceptions may include, but are not limited to:	
	Pervasively regulated businesses.	
	Checkpoints and other blanket searches.	
	Emergency circumstances.	
	Open-fields doctrine.	
	Other.	
Has joint training occurred? Consider joint investigative training between law enforcement and public health.		

Issues for Analysis		State/Local Information
	Forensic epidemiology (CDC).	
	"FBI Criminal and Epidemiological Investigation Handbook."	
Is the public health agency involved with a state or local FUSION center? What policies, procedures, and agreements govern data sharing?		
Identify existing memoranda of understanding (MOUs) or data sharing agreements with law enforcement; analyze if updates are required or additional agreements are needed.		
	A MOU may include provisions regarding:	
	Information to be shared.	
	Purpose for which information is to be used.	
	Method for sharing.	
	Who has access to the information.	
	Acceptable uses and linkages of the information.	
	Protection and security of the information.	
	Retaining, reusing, and further sharing information.	
	Audits or other mechanisms to monitor proper use.	
	Accountability and enforcing terms of agreement.	
	Other.	

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