

STATE OF COLORADO

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Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

To: Colorado Hospitals and Public Health Agencies
From: Ned Calonge, Acting Chief Medical Officer, Larry H. Wall, President, Colorado Health and Hospital Association
Re: Public Health Reporting and HIPAA

The purpose of this letter is to clarify public health reporting under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). **PUBLIC HEALTH REPORTING MANDATED BY LAW IS NOT CHANGED BY HIPAA. FURTHERMORE, HIPAA SPECIFICALLY PROVIDES FOR PUBLIC HEALTH REPORTING WITHOUT A PATIENT'S AUTHORIZATION OR CONSENT FORM.** An accounting of a public health reporting disclosure is, however, required by HIPAA.

HIPAA provides for reporting to public health authorities (see attached excerpts):

1. **In the HIPAA Law itself**
2. **In the HIPAA Rules and Regulations (Privacy Rule under Administrative Simplification) and Guidance**

The following is a list of statutory public health reporting requirements that continues under HIPAA:

Division of Health Facilities occurrences (patient deaths, abuse, etc. in regulated facilities) § 25-1-124, C.R.S.

Newborn metabolic (blood) screening § 25-4-1004 (b), C.R.S.

Newborn hearing screening § 25-4-1004.7 (IV)(3), C.R.S.

Birth defects monitoring program, Colorado Responds to Children with Special Needs § 25-1-207(1)(dd), C.R.S. and Board of Health Rules (6 CRR 1009-7)

Vital statistics (birth, deaths, etc.) § 25-2-101 through § 25-2-121, C.R.S.

Communicable diseases, including HIV/AIDS and venereal diseases, rabies and animal bites, environmental and chronic diseases, tuberculosis § 25-1-122, C.R.S., § 25-4-502, C.R.S. and § 25-4-1402, C.R.S.

Cancer registry § 25-1-122, C.R.S

Trauma registry § 25-3.5-704 (2) (f), C.R.S.

See also an attached list of Board of Health Internet sites that address reporting. Board of Health rules have the force of law. Please note that the Colorado Department of Public Health and Environment has designated the Colorado Hospital Association Discharge Data program data base for hospital reporting of diseases, per the Board of Health rules attached. Discharge data reporting should continue under HIPAA as part of mandatory public health reporting.

Please contact Ann McNulty of the Colorado Department of Public Health and Environment (303) 692-2311 if you have any questions about reporting to public health authorities. Michael Boyson of the Colorado Health and Hospital Association (720) 489-1630 x28 is also available.

What the law says:

The Health Insurance Portability and Accountability Act of 1996

(<http://aspe.hhs.gov/admsimp/pl104191.htm>):

SEC. 1178. (a) GENERAL EFFECT.

"(b) PUBLIC HEALTH.--Nothing 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.

What the rules say:

The HIPAA Privacy Rule, under Administrative Simplification

(<http://hhs.gov/ocr/hipaa/finalreg.html>)

§ 164.512 Uses and disclosures for which an authorization, or opportunity to agree or object is not required.

A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.

(a) Standard: 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.

(2) A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law.

✓ (b) Standard: 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; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;

(ii) A public health authority or other appropriate government 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 (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity....

(iv) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation; or ...

(2) Permitted uses. If the covered entity also is a public health authority, the covered entity is permitted to use protected health information in all cases in which it is permitted to disclose such information for public health activities under paragraph (b)(1) of this section.

In the Guidance to the Privacy Rule:

(<http://hhs.gov/ocr/hipaa/finalreg.html>)

II. SECTION-BY-SECTION DESCRIPTION OF RULE PROVISIONS

Section 164.512(b)--Uses and Disclosures for Public Health Activities

The NPRM* would have allowed covered entities to disclose protected health information without individual authorization to: (1) a public health authority 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; (2) a public health authority or other appropriate authority authorized by law to receive reports of child abuse or neglect; (3) a person or entity other than a governmental authority that could demonstrate or demonstrated that it was acting to comply with requirements or direction of a public health authority; or (4) a person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition and was authorized by law to be notified as necessary in the conduct of a public health intervention or investigation.

In the final rule, we broaden the scope of permissible disclosures pursuant to item (1) listed above. We narrow the scope of disclosures permissible under item (3) of this list, and we add language to clarify the scope of permissible disclosures with respect to item (4) on the list. We broaden the scope of allowable disclosures regarding item (1) by allowing covered entities to disclose protected health information not only to U.S. public health authorities but also, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority. For example, we allow covered entities to disclose protected health information to a foreign government agency that is collaborating with the Centers for Disease Control and Prevention to limit the spread of infectious disease....

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** as specified in the NPRM. The final rule retains the NPRM provision allowing covered entities to disclose protected health information to public health authorities or other appropriate government authorities authorized by law to receive reports of child abuse or neglect. In addition, we clarify the NPRM's provision regarding disclosure of protected health information to persons who may have been exposed to a communicable disease or who may otherwise be at risk of contracting or spreading a disease or condition. Under the final rule, covered entities may disclose protected health information to such individuals when the covered entity or public health authority is authorized by law to notify these individuals as necessary in the conduct of a public health intervention or investigation.

In addition, as in the NPRM, under the final rule, a covered entity that is acting as a public health authority - for example, a public hospital conducting infectious disease surveillance in its role as an arm of the public health department - may use protected health information in all cases for which it is allowed to disclose such information for public health activities as described above.

*Notice of Proposed Rule Making

Board of Health Sites (mandatory reporting)

<http://www.cdphe.state.co.us/op/regs/diseasecontrol/100901epidemiccommunicablediseasecontrol.pdf>

<http://www.cdphe.state.co.us/op/regs/diseasecontrol/100907.pdf>

<http://www.cdphe.state.co.us/op/regs/diseasecontrol/100908.pdf>

<http://www.cdphe.state.co.us/op/regs/labregs/100505.pdf>

<http://www.cdphe.state.co.us/op/regs/labregs/100504.pdf>

<http://www.cdphe.state.co.us/op/regs/diseasecontrol/100909.pdf>