

# 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 Health Care Providers  
From: Joni Reynolds, RN, Director of Public Health Programs  
Date: October 15, 2013  
Re: Public Health Reporting and HIPAA

The purpose of this memo is to clarify the ongoing state statutory requirements of public health reporting to the Colorado Department of Public Health and Environment (department) in light of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). The department is a public health authority pursuant to HIPAA, and as such is authorized to receive protected health information (PHI). The department is not a HIPAA Covered Entity or a Hybrid Entity as it does not perform HIPAA covered functions; nevertheless, the department safeguards all confidential information in accordance with HIPAA Security and Privacy Rule standards.

- HIPAA does not change or eliminate any of the public health reporting requirements listed below that are mandated by law.
- HIPAA Covered Entities are not required to enter into Business Associate Agreements for the purposes of public health reporting.
- HIPAA specifically provides for public health reporting without a patient's authorization or consent; however, a HIPAA Covered Entity must account for public health reporting disclosures. The provider's office does not need to document in each patient's medical record that a routine public health disclosure was made. Summary documentation of the disclosures for public health purposes requires only the date of the first and last disclosure in a given period (site visit dates), a description of the frequency of that disclosure (e.g., annual), a brief description of the purpose of the disclosure, the name and address of the recipient, and a brief description of the information released.

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

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

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

- Health facility occurrence reporting (patient deaths, abuse, etc. in regulated facilities) § 25-1-124, C.R.S.
- Newborn metabolic (blood) screening § 25-4-1004 (b), C.R.S. and Board of Health Rules (6 CRR 1009-7)
- Newborn hearing screening § 25-4-1004.7 (IV)(3), C.R.S. and Board of Health Rules (6 CRR 1009-7)
- 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 sexually transmitted infections, 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.
- Immunization registry § 25-4-2403, C.R.S.<sup>1</sup>

<sup>1</sup> Reporting in the Colorado Immunization Information System (CIIS) is authorized under the department's public health authority, but is not required by law.

For Board of Health disease reporting regulations, please reference the following website: "<http://www.cdphe.state.co.us/regulations/index.html>". 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 in most cases, unless mandatory hospital reporting is required otherwise per the Board of Health rules. Discharge data reporting should continue under HIPAA as part of mandatory public health reporting.

Please contact Michelle Lavigne, Privacy Officer, of the Colorado Department of Public Health and Environment (303) 692-2311 if you have any questions about reporting to public health authorities.

## What the law says:

### The Health Insurance Portability and Accountability Act of 1996

#### 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 Security and Privacy Rule, under Administrative Simplification

#### § 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 uses and 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.