

Managing Confidential Information in Communicable Disease Outbreaks

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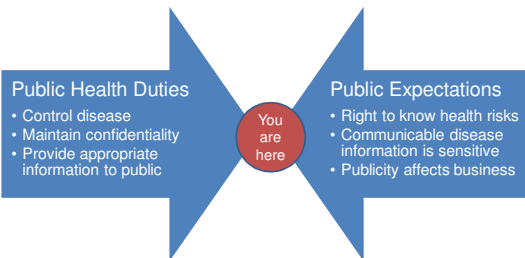
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Context



Laws & issues

HIPAA

- Rules allowing disclosure of PHI to public health, and use and disclosure of PHI by public health, for disease control purposes
- De-identification of PHI

North Carolina Law

- Public records law & exceptions
- Communicable disease confidentiality statute
- Communicable disease control measure rules



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Public records

General Rule

The records of local government agencies are open to access and inspection by members of the public, ***unless there is a specific law that says they are not.***

GS Ch. 132

Exceptions

LPHA records that are ***not subject to public access:***

- Medical records and other records containing client's protected health information (GS 130A-12)
- Information that identifies a person who has or may have a reportable communicable disease (GS 130A-143, 10A NCAC 41A .0101)

Information that identifies an individual who has or may have a reportable communicable disease is confidential and should not be disclosed in response to a request for public records.

HIPAA: Using & Disclosing PHI for Communicable Disease Control

- A covered entity may disclose PHI to public health officials when disclosure is required by law. 45 CFR 164.512(a)
- A covered entity may disclose PHI to public health officials for specified public health purposes, including disease reporting and control. 45 CFR 164.512(b)
- A public health agency that is covered by HIPAA may use and disclose PHI for specified public health purposes, including communicable disease control. 45 CFR 164.512(b)



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HIPAA allows health care providers and others to disclose PHI to public health for communicable disease control purposes.

It also allows public health to use and disclose PHI for communicable disease control purposes.

NC Law: Obtaining CD Information

Communicable Disease Reporting

- Reports required, immunity from liability: GS 130A-135 through 130A-142
- Reportable diseases & conditions: 10A NCAC 41A .0101

Communicable Disease Investigations

- Health care providers and others must provide access to records and information pertaining to (1) diagnosis, prevention, or treatment of an infected or exposed person, or (2) investigation of a known or reasonably suspected outbreak of a communicable disease or condition.

NC Law: Using & Disclosing CD Information, Confidentiality

Investigation and Control

- Local health director shall investigate cases and ensure communicable disease control measures are given. GS 130A-144(a),(e); 10A NCAC 41A .0200 (control measures).

Confidentiality

- Information or records identifying a person who has or may have a reportable communicable disease are confidential, not subject to public access, and may be released only as allowed by GS 130A-143.
- Release is permitted when necessary to protect the public health and made as provided in communicable disease control rules. GS 130A-143(4).

NC law:

- Requires health care providers and others to report CDs to public health and disclose other information on request for CD investigations and control.
- Requires local health directors to investigate CDs and ensure control measures.
- Makes CD information confidential and not public record, but allows public health to disclose PHI to control communicable disease.

HIPAA: De-identification of PHI

- If information is de-identified, it is no longer subject to HIPAA's restrictions on use and disclosure. See 45 CFR 164.514(a).
- But a HIPAA covered entity may consider information de-identified only if one of two conditions are met:



HIPAA: De-identification of PHI

<p><u>Expert determination</u></p> <p>Person with knowledge of & experience with statistical methods for making information non-identifiable determines that the risk that the info could be used (alone or in combination with other info) to identify the individual is very small.</p>	<p><u>Specific identifiers stripped</u></p> <p>Remove all:</p> <ul style="list-style-type: none"> • Names & addresses • Geographic subdivisions smaller than a state* • Dates related to individual--birth, treatment, other dates • Telephone & fax numbers • E-mail, URLs, IP address • SSN, medical record number, other numbers • And more—see rule
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If a local health department can de-identify PHI about communicable disease, then HIPAA no longer governs use or disclosure of the information.

However, de-identification must be done in accordance with HIPAA standards, and this may be difficult to do.

Solutions?

- If the information is never PHI, it's not subject to HIPAA → de-identification rules do not apply.
 - State confidentiality law still applies.
- How to implement this?
 - Avoid receiving individually identifiable information about CDs in HIPAA-covered component of the LPHA. *(Probably not practical)*
 - **Disclose only information that was received from another source (such as a state agency) in a non-individually identifiable form.**

Scenario 1

Public health officials need to identify exposed people for prophylaxis.

- A student dies of invasive meningococcal disease
- A restaurant cook is diagnosed with hepatitis A
- A person who attended multiple public events is diagnosed with measles

Scenario 2

Public health officials determine there is no need to identify contacts, but they want to inform the public about community health status and/or promote prevention.

- Flu-associated deaths
- Illnesses carried by mosquitoes or ticks

Scenario 3

Public health officials investigate and control an outbreak and determine there is no public health rationale for notifying the public.

- A facility experiences several cases of norovirus. The local health department investigates and implements all appropriate control measures, including notification of patients and staff.
