

HIPAA and the Big Problem with Small Numbers

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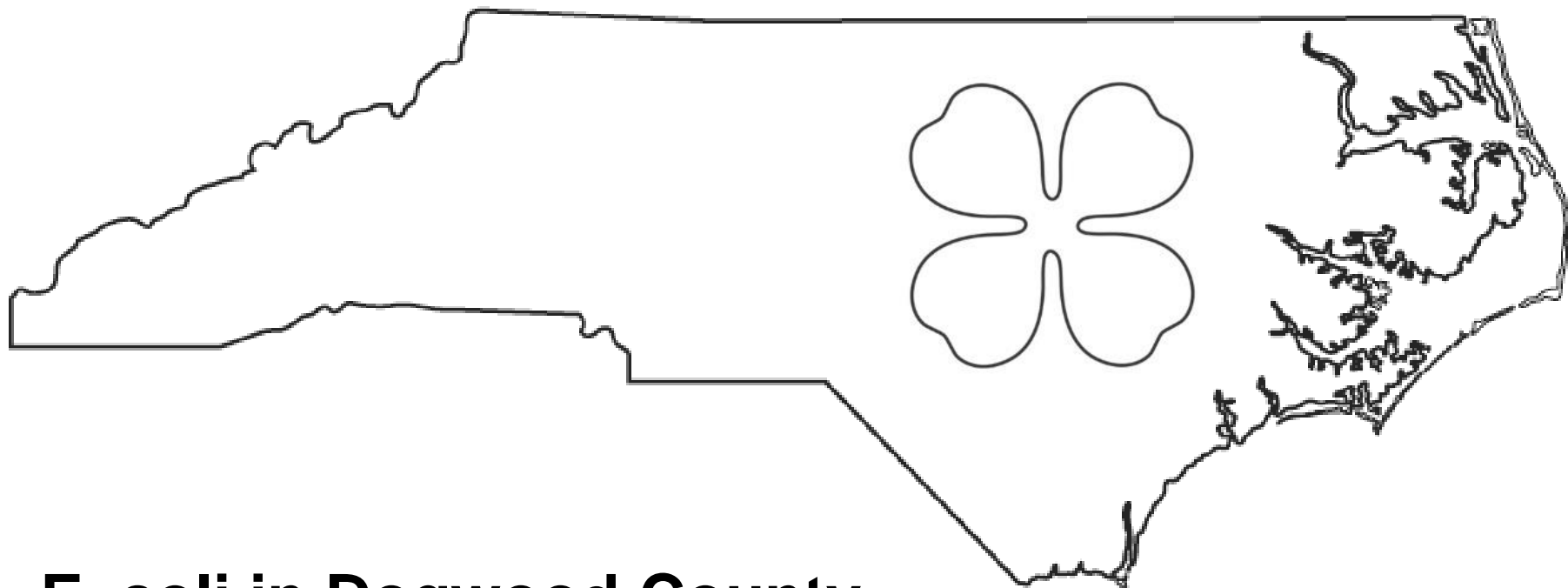
NC Local Health Directors' Legal Conference
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Dogwood County



E. coli in Dogwood County

- 7 cases
- 1 hospitalization
- 0 deaths

The Dogwood Dispatch

WEDNESDAY, APRIL 17, 2019

"All the news we can afford to print"

Boy with E. coli released from hospital *Parents seek donations to help with healthcare costs*

Seven-year-old Michael Jones, one of seven Dogwood County residents who contracted E. coli in the recent outbreak, has been released from the hospital and is doing well. His parents have set up a go-fund-me account to pay for hospitalization costs that were not covered by insurance.

"We are so thankful that Michael has recovered fully," said Jane Jones, Michael's mother.

Protected health information (PHI)

Individually identifiable

- The information identifies an individual, *or*
- The information can be used to identify an individual.

Relates to health or health care

- Information about health status or condition, *or*
- Information about provision of health care, *or*
- Information about payment for the provision of health care

Created or received by a covered entity

- The information is created or received by a health plan, health care clearinghouse, *or* a health care provider who engages in HIPAA transactions

Reporter calls medical director



- What was the total number of cases in Dogwood County?
- How many were hospitalized?
- Were there any deaths?

The small number problem

- When case numbers are small, people may be identifiable, especially when there is other publicly available information about the case(s).
- If a number is derived from PHI, is the number itself PHI?



What's the answer???



- PHI can be disclosed if the HIPAA Privacy Rule allows the disclosure.
- PHI can be de-identified. De-identified information is not subject to the Privacy Rule.

Disclosures for public health

A health department may use or disclose PHI for the public health purposes set out in the Privacy Rule (45 CFR 164.512(b)), including:

- Disclosures to notify people at risk of acquiring a communicable disease.
- Uses or disclosures necessary to carrying out the health department's legally authorized duties re: surveillance, investigation, or intervention.

De-identifying PHI

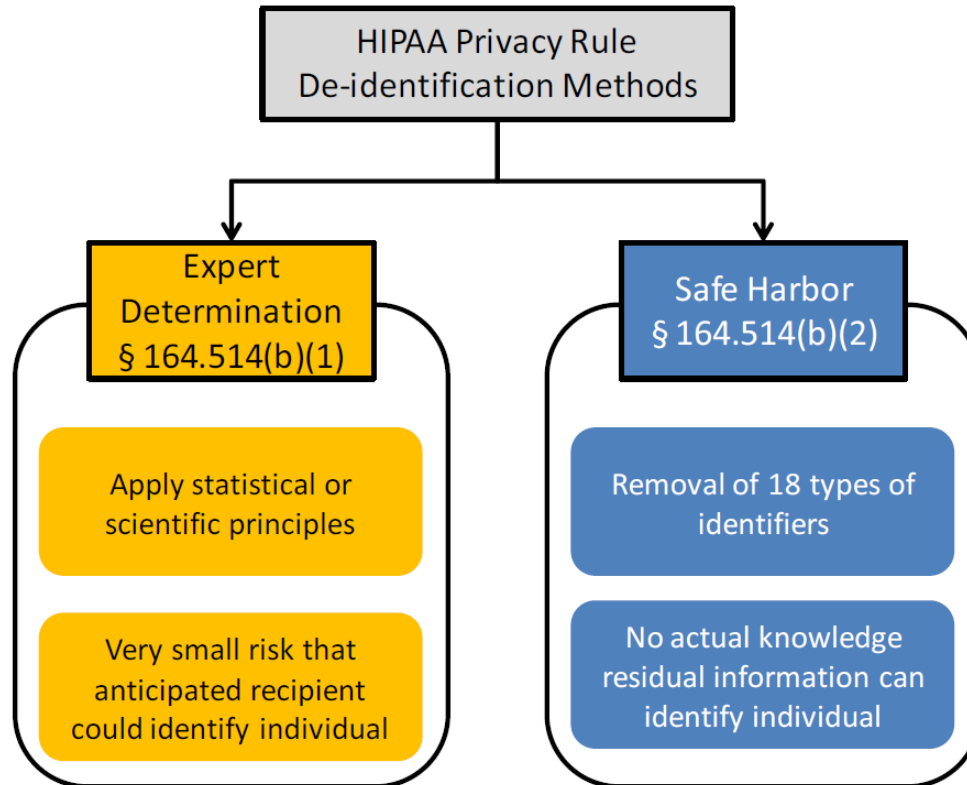


Figure 1. Two methods to achieve de-identification in accordance with the HIPAA Privacy Rule.

Source: US DHHS, Guidance on De-Identification of Protected Health Information (November 2012)

De-identification: Safe Harbor Method

This method requires stripping identifiers from the information, including all of the following:

- 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 the rule

Bottom lines

- When you make small numbers public, individuals might be identifiable.
- However:
 - PHI may be used or disclosed for public health purposes authorized by the HIPAA Privacy Rule.
 - If PHI can be de-identified, it is no longer governed by the Privacy Rule.
- Health departments should consider best practices as well as legal obligations.

HIPAA and the ~~Big~~ Manageable Problem with Small Numbers

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