

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



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Re: Reporting communicable diseases and providing information for public health investigation under HIPAA

Dear Health Care Provider, Laboratory or other Reporting Entity:

It is our understanding that you have asserted that patient authorization is required under HIPAA before you are allowed to report a designated disease or to provide information about the individual affected by that disease to Utah public health authorities conducting an investigation into the case. As described below, Utah law requires that you report certain diseases to public health and that you provide additional information to assist public health efforts to investigate or respond to that report. Patient authorization for those disclosures is waived under HIPAA's provisions.

Federal law passed by Congress and signed by the President makes it clear that HIPAA will not interfere with public health reporting.

42 USCS 1320-d- 7(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.

The HIPAA privacy rule passed by the Department of Health and Human Services follows that statute and expressly exempts reporting required by state law from the patient consent provisions. Section 164.512(a) states:

§ 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.

(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.

Utah Code Ann. §26-6 authorizes the Department to develop a system to detect and monitor chronic diseases:

26-6-3 Authority to investigate and control epidemic infections and communicable disease.
The department has authority to investigate and control the causes of epidemic infections and communicable disease, and shall provide for the detection, reporting, prevention, and control of communicable diseases and epidemic infections or any other health hazard which may affect the public health.

The following entities are required under Utah statute to report:

26-6-6 Duty to report individual suspected of having communicable disease.
The following shall report to the department or the local health department regarding any individual suffering from or suspected of having a disease that is communicable, as required by department rule:

- (1) health care providers as defined in Section 78-14-3;*
- (2) facilities licensed under Title 26, Chapter 21, Health Care Facility Licensure and Inspection Act;*
- (3) health care facilities operated by the federal government;*
- (4) mental health facilities,.*
- (5) care facilities licensed by the Department of Human Services;*
- (6) nursing homes and other care facilities;*
- (7) dispensaries, clinics, or laboratories that diagnose, test, or otherwise care for individuals who are suffering from a disease suspected of being communicable,.*
- (8) individuals who have knowledge of others who have a communicable disease,.*
- (9) individuals in charge of schools having responsibility for any individuals who have a disease suspected of being communicable, and*
- (10) child care programs, as defined in Section 26-39-102*

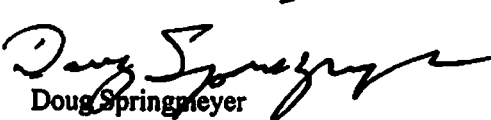
Administrative rule R386- 702-2 lists the diseases that have been declared to be of public health concern and for which reporting is required by law. The disease in question in this instance is included in that list (attached).

If you need more information on required disease reporting, you may call (801) 538-6220.

We understand that you are trying to comply with a new federal law and are appropriately concerned with the privacy of health information entrusted to you as a health care provider, laboratory or other reporting entity. We want to assure you that the Utah statutes that require reporting of this information also contain privacy and confidentiality provisions that strictly limit how the Utah Department of Health and the Local Health Department can use and further disclose the information.

I write on behalf of my client, the Department of Health. We recognize the time and effort that is required to comply with mandated public health reporting. Thank you for your continued commitment to help us to protect the public health.

Sincerely,


Doug Springmeyer
Assistant Attorney General