

Disclosure of Identifiable Health Information Frequently Asked Questions

April 14, 2020

On April 7, 2020, Pete Ricketts, Governor of the State of Nebraska, signed Executive Order 20-15, which suspends specific state statutes and their implementing regulations regarding the disclosure and use of reports or information about cases of communicable diseases. The Department has developed the following FAQ to provide guidance and information about such disclosure and use of identifiable health information. The FAQ will be updated as new questions are received.

Q: What is identifiable health information?

A: Identifiable health information is information created or received by a health care provider, health plan, employer, or health care clearinghouse that:

- relates to the past, present, or future physical or mental health condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
- identifies the individual or could reasonably be used to identify the individual.

Q: What disclosures are permitted under the Executive Order?

A: The Executive Order only allows disclosures on COVID-19 related health information and is intended to permit disclosures like those permitted under the federal Health Insurance Portability and Accountability Act (HIPAA) to first responders and other sharing of patient information, including disclosures:

- when first responders may be at risk of infection;
- when disclosure to first responders is necessary to prevent and lessen a serious and imminent threat to the health and safety of a person or the public;
- when notifying a public health authority in order to prevent or control spread of a disease; and
- other similar circumstances to prevent and lessen a serious or imminent threat.

Q: Will this executive order allow the disclosure of all my information to anyone, including the public?

A: No. The Executive Order permits the disclosure or use of identifiable health information only when there is a **good faith belief** that the use or disclosure would prevent or lessen a serious and imminent threat to the health or safety of a person or the public and the disclosure or use is limited to the **minimum information necessary**. For example, posting the full names, dates of birth, social security numbers, addresses, and other similar information of individuals who have tested positive for COVID-19 on a public website would not be permissible under the Executive Order because this disclosure is not limited to the minimum information necessary.

Q: What constitutes a good faith belief?

A: A good faith belief is a belief that is honestly and sincerely held, without deceit or fraud. Any release of identifiable



health information that the disclosing party does not honestly and sincerely believe will prevent or lessen a serious and imminent threat to the health or safety of a person or the public, or that is made with any deception or ill will, is not a good faith disclosure allowed by this executive order.

Q: How will this executive order help prevent serious or imminent threat?

A: All entities with identifiable health information must balance the individual's right to privacy and confidentiality with the public's right to know specific information. The confidentiality of the information must be the highest priority. Under the current [State of Emergency](#) and [Directed Health Measures](#), it is clear that understanding whether COVID-19 is present in a particular county and whether there has been widespread transmission or community transmission can greatly affect an individual's decision-making. Therefore, allowing the disclosure of certain types of information can help educate the public and permit the more efficient and effective distribution of resources to specific entities.

Q: Is a local public health department required to disclose identifiable health information?

A: No. This Executive Order allows, but does not require, the disclosure or use of identifiable health information when DHHS or a local public health department has a good faith belief that such disclosure or use would prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and the disclosure or use is limited to the minimum information necessary to this purpose.

Q: Is the public health department required to disclose identifiable health information to first responders?

A: No. This executive order allows for the disclosure of identifiable health information to first responders when there is a good faith belief that such a disclosure would prevent or lessen a serious and imminent threat to the health or safety of the first responders and the disclosure is limited to the minimum information necessary. The identifiable health information remains subject to all other applicable state and federal statutes, including HIPAA. For those entities subject to HIPAA, The U.S. Department of Health and Human Services (HHS), Office for Civil Rights has [issued guidance](#) specifically on providing information to first responders.

Q: If a public health department does disclose a list of addresses of individuals who have tested positive for COVID-19 to first responders, can first responders take lesser precautions with other addresses?

A: No. **First responders should treat every address as a potential COVID-19-positive site.** It is now known that individuals can have COVID-19 without presenting symptoms and can shed the virus while being asymptomatic. Because of this, every direct personal contact without recent prior knowledge of the individual, such as emergency calls, should be treated as though a COVID-19-positive individual is involved.

In addition, because there is a lag time between specimen collections and reporting, it is likely that first responders may not currently have accurate information about who is COVID-19 positive. Plus, there is no way to guarantee that the actual person(s) whom first responders may encounter at a particular address are those whose COVID-19 status promoted the address to be included on or excluded from a list of addresses where people have tested positive for COVID-19.

Q: Will disclosure result in discrimination?

A: No. This Executive Order does not purport to suspend any federal or state anti-discrimination protections. The HHS Office for Civil Rights addressed this question directly in a [March 28, 2020, bulletin](#).