

**Local Public Health
Departments and HIPAA
Readiness**

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Public Health Impact

- HIPAA contains strong evidence of intent to not affect the goals of public health
 - **Under 160.203 (a) & (c) General Rule and Exceptions**
 - **In the privacy regulation, 164.512(b), Uses and disclosures for public health activities**
- Many PH entities appear to interpret HIPAA as either affecting everything or nothing
- While HIPAA provides several avenues for PH exemptions, reality is the middle road

Critical Issues for Local PH

1. Everything starts with determining covered entity status
2. **Do not ignore other impacts, effects, and expectations generated by HIPAA even if legally exempt**
3. Document and retain all analyses, business processes, and other activities undertaken to determine compliance and justify the ultimate decision (covered or not)

Impacts: Compliance Status

- Although PH programs may have fewer legal compliance requirements, business drivers will still impact PH activities
- Many PH programs have ties to Medicaid, and these relationships drive compliance status

Impacts: Data Reporting/Sharing

- PH entities must consider the potential indirect effects of HIPAA on reporting
- PH entities must consider the potential indirect effects of HIPAA on data sharing

HIPAA, Public Health, and State Law

Under the “uses and disclosures required by law” section, HIPAA *permits* covered entities (providers, payers, clearinghouses) to report protected 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”.

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General Approach to Assessing Compliance

- Required to comply?
- May apply only specific functions/programs
 - Ask – Is it a “covered entity”?
 - Ask – business associate of such entity?
 - Ask – any special provisions (joint govt plans)?
- Where no legal compliance, adopt same standards for business reasons?
- What do we have to do to meet the standards?

WA DOH Assessment Process

- Identify which programs/activities are covered entities (legal impact)
- Identify what programs/activities perform covered functions (business impact)
- Cost-benefit--most PH programs and activities too small to think of system-specific solutions (or gap analysis)—think outside box for other options
- If ANY part of a PH entity requires compliance, the legal entity overall is liable

Model for *compliance* analysis

	What functions/programs are ...	
Kind of covered entity	Agency?	Agency business associate of covered entity?
Clearinghouse		
Health Plan		
Provider		
None of above		

What programs/systems are *affected by HIPAA?*

	Functions related to standards?	Mandate: Changes to comply HIPAA	No mandate: Priorities for aligning HIPAA
Transactions			
Identifiers			
Privacy			
Security			

WA DOH Assessment

- Some programs with Medicaid relationships will require compliance
- At least 3 exempt programs may need to comply to continue operations
- Contracts and data sharing agreements will require review and revision
- Privacy and security important—now an integral part of doing business
- Many public health programs are likely exempt from legal compliance, but are other drivers

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Compliance Recommendations: Transactions

1. Develop program specific options for HIPAA transaction compliance

Options:

- Turn over to another agency
- Partner with another agency for processing
- Discontinue program
- Purchase translator software/outsource/clearinghouse
- Develop centralized agency processing capacity
- Modify current application

Weigh cost/benefit of options; system fix last resort

Compliance Recommendations: Privacy and Security

2. Adopt HIPAA privacy and security minimum standards at the agency level
 - HIPAA privacy requirements similar to existing WA state law
 - HIPAA draft security requirements in line with agency direction and WA digital government security requirements
 - Good business practice—provide assurance to public, business partners, and stakeholders

Compliance Recommendations: Identifiers and Contracts

3. Adopt or incorporate HIPAA standard identifiers across all agency programs
 - Will become the common standard for the industry
 - All identifiers still in draft—not immediate
4. Modify contracts to comply with HIPAA requirements
 - Develop common language for use in all agencies

Compliance Recommendations: Coordination

5. Coordinate and integrate HIPAA compliance with existing related agency activities

WA already involved in many similar activities:

- Security infrastructure (HAN, bioterrorism) and statewide ISB security standards
- National Electronic Disease Surveillance System
- Digital government (electronic transmission)
- Governor's Executive Order on Privacy
- Public health data standards

Local Health Impacts

- Local health jurisdictions covered under HIPAA as providers and sometimes plans
- Indirect effects when dealing with other providers and payers that will be compliant must be considered
- Coordination across other affected county programs is advisable (health & social services, jails, education)
- Opportunity to examine programs for utility and innovative solutions

What Local Government Can Do

- Involve statewide leadership groups (county health officers, county executives, etc.)
- Coordinate activities across county depts.
- Pursue partnerships across counties
- Organize groups around major topics
- Provide and/or advocate for networking/ resource sharing opportunities
- Create model documents or templates
- Build HIPAA coalitions
- Develop “outside the box” alternatives and criteria

Contact Information

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