State of Utah

SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

Department of Health & Human Services

TRACY S. GRUBER
Executive Director

NATE CHECKETTS
Deputy Director

DR. MICHELLE HOFMANN
Executive Medical Director

DAVID LITVACK
Deputy Director

NATE WINTERS
Deputy Director

Guidance on reporting communicable diseases and providing information for public health investigations under Utah law and HIPAA

Some health care providers, laboratories, and other reporting entities believe that HIPAA requires patient authorization before they are allowed to report a case of disease or provide information about the individual affected by that disease to Utah public health authorities who are investigating that case. However, that misapplies state and federal law. As described below, Utah law requires that various parties report occurrence of certain diseases to public health entities and that they provide additional information to assist public health efforts to investigate or respond to that report. To facilitate reporting and investigation, patient authorization for disclosures to public health entities is waived by HIPAA provisions.

First, federal law has made clear since 1996 that HIPAA does not interfere with public health reporting.

> ***42 U.S.C. 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" (enacted by the federal Department of Health and Human Services in 2001) subsection 45 CFR 164.512(a)(1) follows that federal statute and exempts reporting required by state law from typical HIPAA patient consent provisions:

> ***§ 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.*

In addition, Privacy Rule subsection 45 CFR 164.512(b)(i) specifically authorizes such disclosures for public health purposes to "a public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling

disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions."

Utah law designates the Utah Department of Health and Human Services (DHHS) and local health departments as public health authorities responsible for receiving public health surveillance, investigation, and intervention information. Utah Code 26B-7-202 (formerly 26-6-3) authorizes the DHHS to detect and monitor communicable disease:

> ***26B-7-202 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.*

Similarly, Utah Code 26A-1-106(3) makes local health departments "responsible within their boundaries for providing…basic public health services that include…public health administration…and communicable disease control, surveillance, and epidemiology."

To support those efforts, the following entities are required by Utah Code 26B-7-206 (formerly 26-6-6) to report of cases of communicable disease to the DHHS or their local health department:

> ***26B-7-206 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 78B-3-403;*
> *(2) facilities licensed under [Title 26B,] Chapter 2, Part 2, Health Care Facility Licensing and Inspection;*
> *(3) health care facilities operated by the federal government;*
> *(4) mental health facilities;*
> *(5) care facilities licensed by the department;*
> *(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 26B-2-401.*

In keeping with those Utah laws, Utah Administrative Rule R386-702-2 lists the diseases of public health concern that must be reported as required by law. The disease in question in this instance is included in that list (see the attached list). For more information on required disease reporting, please call (801) 538-6220.

We understand and respect the desire to comply with federal law and appropriate concern for the privacy of health information entrusted to the entities subject to mandatory reporting. DHHS assures that the Utah laws that require reporting

of this information also contain privacy and confidentiality provisions that strictly limit how DHHS and local health departments can use and further disclose that information. DHHS recognizes the time and effort required to comply with mandatory disease reporting. Thank you for your continued commitment to helping protect public health.

Cannon Bldg.: 288 North 1460 West, Salt Lake City, Utah 84116
telephone: (801) 538-4001 | email: dhhs@utah.gov | web: dhhs.utah.gov

R386-702-3. Reportable Events.

(1) The Department declares the following events to be of concern to public health and reporting of all instances is required or authorized by Sections 26-6-6 and Title 26, Chapter 23b, Detection of Public Health Emergencies Act.

(2) Events reportable by each entity are as follows:

(a) acute flaccid myelitis;

(b) adverse event resulting from smallpox vaccination (vaccinia virus, orthopox virus);

(c) anaplasmosis (Anaplasma phagocytophilum);

(d) anthrax (Bacillus anthracis) or anthrax-like illness caused by Bacillus cereus strains that express anthrax toxin genes;

(e) antibiotic resistant organisms from any clinical specimen that meet the following criteria:

(i) resistant to a carbapenem in:

(A) Acinetobacter species;

(B) Enterobacter species;

(C) Escherichia coli; or

(D) Klebsiella species; or

(ii) Resistant to vancomycin in Staphylococcus aureus (VRSA); or

(iii) demonstrated carbapenemase production in:

(A) Acinetobacter species;

(B) Enterobacter species;

(C) Escherichia coli;

(D) Klebsiella species; or

(E) any other Enterobacteriaceae species;

(f) arbovirus infection, including:

(i) chikungunya virus infection;

(ii) West Nile virus infection; and

(iii) Zika virus infection; including congenital;

(g) babesiosis (Babesia spp.);

(h) botulism (Clostridium botulinum);

(i) brucellosis (Brucella spp.);

(j) campylobacteriosis (Campylobacter spp.);

(k) Candida auris or Candida haemulonii from any body site;

(l) Chagas disease (Trypanosoma cruzi);

(m) chancroid (Haemophilus ducreyi);

(n) chickenpox (varicella zoster virus, VZV, human herpesvirus 3, HHV-3);

(o) chlamydia (Chlamydia trachomatis);

(p) coccidioidomycosis (Coccidioides spp.), also known as valley fever;

(q) Colorado tick fever (Colorado tick fever virus, Coltivirus spp.), also known as American mountain tick fever;

(r) novel coronavirus disease including Middle East respiratory syndrome (MERS-CoV), Severe acute respiratory syndrome (SARS-CoV), and COVID-19 (SARS-CoV-2);

(s) cryptosporidiosis (Cryptosporidium spp.);

(t) cyclosporiasis (Cyclospora spp., including Cyclospora cayetanensis);

(u) dengue fever (dengue virus);

(v) diphtheria (Corynebacterium diphtheriae);

(w) ehrlichiosis (Ehrlichia spp.);

(x) encephalitis (bacterial, fungal, parasitic, protozoan, and viral);

(y) Shiga toxin-producing Escherichia coli (STEC) infection;

(z) giardiasis (Giardia lamblia), also known as beaver fever;

(aa) gonorrhea (Neisseria gonorrhoeae), including sexually transmitted and ophthalmia neonatorum;

(bb) Haemophilus influenzae, invasive disease;

(cc) hantavirus infection (Sin Nombre virus);

(dd) hemolytic uremic syndrome, postdiarrheal;

(ee) hepatitis, viral including:

(i) hepatitis A;

(ii) hepatitis B (acute, chronic, and perinatal);

(iii) hepatitis C (acute, chronic, and perinatal);

(iv) hepatitis D; and

(v) hepatitis E;

(ff) human immunodeficiency virus (HIV) infection, including acquired immune deficiency syndrome (AIDS) diagnosis;

(gg) influenza virus infection:

(i) associated with a hospitalization;

(ii) associated with a death in a person under 18 years of age; or

(iii) suspected or confirmed to be caused by a non-seasonal influenza strain;

(hh) Legionellosis (Legionella spp.), also known as Legionnaires' disease;

(ii) leptospirosis (Leptospira spp.);

(jj) listeriosis (Listeria spp., including Listeria monocytogenes);

(kk) Lyme disease (Borrelia burgdorferi, Borrelia mayonii);

(ll) malaria (Plasmodium spp.);

(mm) measles (measles virus), also known as rubeola;

(nn) meningitis (bacterial, fungal, parasitic, protozoan, and viral);

(oo) meningococcal disease (Neisseria meningitidis), invasive;

(pp) mumps (mumps virus);

(qq) mycobacterial infections, including:

(i) tuberculosis (Mycobacterium tuberculosis complex);

(ii) leprosy (Mycobacterium leprae), also known as Hansen's disease; or

(iii) any other mycobacterial infections (Mycobacterium spp.);

(rr) pertussis (Bordetella pertussis);

(ss) plague (Yersinia pestis);

(tt) poliomyelitis (poliovirus), paralytic and nonparalytic;

(uu) psittacosis (Chlamydophila psittaci), also known as ornithosis;

(vv) Q fever (Coxiella burnetii);

(ww) rabies (rabies virus), human and animal;

(xx) relapsing fever (Borrelia spp.), tick-borne and louse-borne;

(yy) rubella (rubella virus), including congenital syndrome;

(zz) salmonellosis (Salmonella spp.);

(aaa) shigellosis (Shigella spp.);

(bbb) smallpox (Variola major and Variola minor);

(ccc) spotted fever rickettsioses (Rickettsia spp.), including Rocky Mountain spotted fever (Rickettsia rickettsii);

(ddd) streptococcal disease, invasive, due to:

(i) Streptococcus pneumoniae;

(ii) group A streptococcus (Streptococcus pyogenes); or

(iii) group B streptococcus (Streptococcus agalactiae);

(eee) Syphilis (Treponema pallidum), including:

(i) any stage;

(ii) congenital; and

(iii) syphilitic stillbirths;

(fff) tetanus (Clostridium tetani);

(ggg) toxic shock syndrome, staphylococcal (Staphylococcus aureus) or streptococcal (Streptococcus pyogenes);

(hhh) transmissible spongiform encephalopathies (prion diseases), including Creutzfeldt-Jakob disease;

(iii) trichinellosis (Trichinella spp.);

(jjj) tularemia (Francisella tularensis);

(kkk) typhoid (Salmonella typhi), cases and carriers;

(lll) vibriosis (Vibrio spp.), including cholera (Vibrio cholerae);

(mmm) viral hemorrhagic fevers including:

(i) Ebola virus disease (Ebolavirus spp.);

(ii) Lassa fever (Lassa virus); and

(iii) Marburg fever (Marburg virus);

(nnn) yellow fever (yellow fever virus).

(3) Pregnancy is a reportable event for a subset of communicable diseases, and reporting is required even if the communicable disease was reported to public health prior to the pregnancy. Perinatally transmissible conditions reportable by each entity are as follows:

(i) hepatitis B infection;

(ii) hepatitis C infection;

(iii) HIV infection;

(iv) listeriosis;

(v) rubella;

(vi) syphilis infection; and

(vii) Zika virus infection.

(4) Antimicrobial susceptibility tests reportable by each entity are as follows:

(a) Full panel antimicrobial susceptibility test results, including minimum inhibitory concentration and results suppressed to the ordering clinician, are reportable when performed on the following organisms:

(i) Candida auris or Candida haemulonii from any body site;

(ii) Mycobacterium tuberculosis;

(iii) Neisseria gonorrhoeae;

(iv) Salmonella species;

(v) Shigella species; and

(vi) Streptococcus pneumoniae;

(vii) organisms resistant to a carbapenem in:

(A) Acinetobacter species;

(B) Enterobacter species;

(C) Escherichia coli; or

(D) Klebsiella species;

(viii) organisms resistant to vancomycin in Staphylococcus aureus (VRSA).

(b) Individual carbapenemase test results including positive, negative, equivocal, indeterminate and the method used, are reportable when performed on organisms resistant to a carbapenem, or with demonstrated carbapenemase, in:

(i) Acinetobacter species;

(ii) Enterobacter species;

(iii) Escherichia coli; and

(iv) Klebsiella species.

(c) Antiviral susceptibility test results, including nucleotide sequencing, genotyping, or phenotypic analysis, are reportable when performed on: human immunodeficiency virus (HIV).

(5) Unusual events reportable by each entity include one or more cases or suspect cases of a communicable disease, condition, or syndrome considered:

(a) rare, unusual, or new to Utah;

(b) previously controlled or eradicated;

(c) caused by an unidentified or newly identified organism;

(d) due to exposure or infection that may indicate a bioterrorism event with potential transmission to the public; or

(e) any other infection not explicitly identified in Subsection R386-702-3(2) that public health considers a public health hazard.

(6) Outbreaks, epidemics, or unusual occurrences of events reportable by each entity are as follows :

(a) Entities shall report two or more cases or suspect cases, with or without an identified organism, including:

(i) gastrointestinal illnesses;

(ii) respiratory illnesses;

(iii) meningitis or encephalitis;

(iv) infections caused by antimicrobial resistant organisms;

(v) illnesses with suspected foodborne or waterborne transmission;

(vi) illnesses with suspected ongoing transmission in any facility;

(vii) infections that may indicate a bioterrorism event; or

(viii) any other infections not explicitly identified in Subsection R386-702-3(2) that public health considers a public health hazard.

(b) Entities shall report increases or shifts in pharmaceutical sales that may indicate changes in disease trends.

(7) Laboratory results reportable by electronic reporters are as follows:

(a) In addition to laboratory results set forth in Subsections R386-702-3(2) through R386-702-3(6), entities reporting electronically shall include the following laboratory results or laboratory results that provide presumptive evidence of the following communicable diseases:

(i) influenza virus;

(ii) norovirus infection;

(iii) Pseudomonas aeruginosa, resistant to a carbapenem, or with demonstrated carbapenemase production;

(iv) Staphylococcus aureus from a normally sterile site with methicillin testing performed, reported as either methicillin-susceptible Staphylococcus aureus (MSSA) or methicillin-resistant Staphylococcus aureus (MRSA); and

(v) Streptococcal disease, invasive due to all species.

(b) Entities reporting electronically shall include any laboratory results including positive, negative, equivocal, indeterminate, associated with the following tests or conditions:

(i) CD4+ T-Lymphocyte tests, regardless of known HIV status;

(ii) chlamydia;

(iii) Clostridium difficile;

(iv) novel coronavirus COVID-19 (SARS-CoV-2), including IgM and IgG serology;

(v) cytomegalovirus (CMV), congenital (infants less than or equal to 12 months of age);

(vi) gonorrhea;

(vii) hepatitis A;

(viii) hepatitis B, including viral loads;

(ix) hepatitis C, including viral loads;

(x) HIV, including viral loads and confirmatory tests;

(xi) liver function tests, including ALT, AST, and bilirubin associated with a viral hepatitis case;

(xii) Lyme disease;

(xiii) respiratory syncytial virus (RSV);

(xiv) syphilis;

(xv) tuberculosis; and

(xvi) Zika virus.

(c) Entities reporting electronically shall report full panel antibiotic susceptibility test results, including minimum inhibitory concentration and results suppressed to the ordering clinician, are reportable when performed on Pseudomonas aeruginosa, resistant to a carbapenem, or with demonstrated carbapenemase.

(d) The Department may, by authority granted through Title 26, Chapter 23b, Detection of Public Health Emergencies Act, identify additional reporting criteria when deemed necessary for the management of outbreaks or identification of exposures.

(e) Non-positive laboratory results reported for the events identified in Subsection R386-702-3(7)(b) will be used for the following purposes as authorized in Subsections 26-1-30(2)(c), 26-1-30(2)(d), and 26-1-30(2)(f):

(i) to determine when a previously reported case becomes non-infectious;

(ii) to identify newly acquired infections through identification of a seroconversion window; or

(iii) to provide information critical for assignment of a case status.

(f) Information associated with a non-positive laboratory result will be kept by the Department for a period of 18 months.

(i) At the end of the 18 month period, if the result has not been appended to an existing case, personal identifiers will be stripped and expunged from the result.

(ii) The de-identified result will be added to a de-identified, aggregate dataset.

(iii) The dataset will be kept for use by public health to analyze trends associated with testing patterns and case distribution, and identify and

establish prevention and intervention efforts for at-risk populations.

(8) Authorized reporting of syndromes and conditions are as follows:

(a) Reporting of encounters for the following syndromes and conditions is authorized by Title 26, Chapter 23b, Detection of Public Health Emergencies Act, unless made mandatory by the declaration of a public health emergency:

(i) respiratory illness, including:

(A) upper or lower respiratory tract infections;

(B) difficulty breathing; or

(C) adult respiratory distress syndrome;

(ii) gastrointestinal illness, including:

(A) vomiting;

(B) diarrhea; or

(C) abdominal pain;

(iii) influenza-like constitutional symptoms or signs;

(iv) neurologic symptoms or signs indicating the possibility of meningitis, encephalitis, or unexplained acute encephalopathy or delirium;

(v) rash illness;

(vi) hemorrhagic illness;

(vii) botulism-like syndrome;

(viii) lymphadenitis;

(ix) sepsis or unexplained shock;

(x) febrile illness (illness with fever, chills or rigors);

(xi) nontraumatic coma or sudden death; and

(xii) other criteria specified by the Department as indicative of disease outbreaks or injurious exposures of uncertain origin.

(b) Reporting of encounters for syndromes and conditions not specified in Subsection R386-702-3(8)(a) is also authorized by Chapter 26-23b, unless made mandatory by the declaration of a public health emergency.

(c) Information included in the reporting of the events identified in Subsection R386-702-3(8)(a) and R386-702-3(8)(b) will be used for the

following purposes:

(i) to support early identification and ruling out of public health threats, disasters, outbreaks, suspected incidents, and acts of bioterrorism;

(ii) to assist in characterizing population groups at greatest risk for disease or injury;

(iii) to support assessment of the severity and magnitude of possible threats; or

(iv) to satisfy syndromic surveillance objectives of the Federal Centers for Medicaid and Medicare Meaningful Use incentive program.

(9) Reporting exceptions:

(a) A university or hospital that conducts research studies exempt from reporting AIDS and HIV infection under Section 26-6-3.5 shall seek

written approval of reporting exemption from the Department institutional review board prior to the study commencement.

(b) The university or hospital shall submit the following to the HIV Epidemiologist within 30 days of Department institutional review board approval:

(i) a summary of the research protocol, including funding sources and justification for requiring anonymity; and

(ii) written approval from the Department institutional review board.

(c) The university or hospital shall submit a report that includes each of the indicators specified in Subsection 26-6-3.5(4)(a) to the HIV Epidemiologist annually during an ongoing research study.

(d) The university or hospital shall submit a final report that includes each of the indicators specified in Subsection 26-6-3.5(4)(a) to the HIV Epidemiologist within 30 days of the conclusion of the research study.

(e) Documents can be submitted to the HIV Epidemiologist by fax at (801) 538-9923 or by mail to 288 North 1460 West Salt Lake City, Utah 84116.