

Chapter 14

Confidentiality

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Introduction

Purpose

Use this section to do the following:

- Determine what information and which records should be treated with confidentiality.
- Identify state policy for maintaining patient confidentiality.
- Take measures to ensure TB patients' confidentiality.
- Determine when it is permissible to share information for public health reasons.

The protection of private patient information is commonly referred to as confidentiality. Confidentiality involves the protection of information revealed during patient–healthcare worker encounters, including all written or electronic records of these encounters. Confidentiality is an essential issue in many different aspects of tuberculosis (TB) control. Healthcare workers need to be aware of confidentiality issues that are relevant to patient–healthcare worker encounters, as well as to the collection, management, and sharing of information gathered on TB patients.¹

Policy

A patient's health information is personal and private. Healthcare workers should keep patient information in confidence and divulge it only with the permission of the patient, except as otherwise allowed by law.

In certain circumstances, patient information can be shared without their consent. For example, when approval for services or payment for services is required. Confidential health information may also be used without patient consent when utilized in health program operation. TB Programs may use this information for program evaluation and development, for example. Under the law, these uses are for treatment, payment, and healthcare operations, and may be found in [NRS 441A.220](#) and [NRS 439.538](#).

What Are the Patient's Rights?

- A patient can ask healthcare providers and programs (examples of programs: DPBH TB Program, County Health Department TB Program) not to share his or her information in some situations. The law may supersede this request in some situations.
- A patient may request a paper copy of HIPAA policy and notice of patient's confidential health record rights.
- A patient may request copies of his or her personal medical records and health information. (Fees may apply)

- A patient may request review of information and corrections if he or she feels information was incorrectly recorded.
- A patient may request a list of the times, after April 14, 2003, when his or her health information was shared with someone else. This excludes the sharing of information for the purposes of treatment, payment, or healthcare operations.
- A patient may ask to restrict the release of his or her health information to a health plan when they have paid in full, out of pocket, for items or services.
- A patient may request mailing health information to an address different from their usual address, or, request delivery in an alternate method.
- A patient may request an electronic copy of his or her medical record/ health information, if available.

What Are Healthcare Providers' and Programs' Responsibilities?

- Under the law, they must keep confidential health information private, except as otherwise provided in the law.
- Must provide the patient with notice explaining legal duties regarding privacy.
- Must notify the patient if there is a breach of unsecured health information.
- Will use or share the minimum amount of confidential health information necessary to perform duties.
- Must have written authorization to disclose psychotherapy notes.
- Will not sell protected health information for any reason.

Contact Information

Questions or concerns about State DPBH TB Program privacy practices:

Division of Public and Behavioral Health

Privacy Officer

4126 Technology Way

Carson City, NV 89703

Phone: (775) 684-4200 (Main number); electronic copy available at:

<http://dhhs.nv.gov/uploadedFiles/dhhsnv.gov/content/Resources/Forms/Notice%20of%20Privacy%20Practices.pdf>

Question or concerns regarding Federal privacy rules:

U.S. Department of Health and Human Services

Office for Civil Rights

50 United Nations Plaza, Room 322

San Francisco, CA 94102

Phone: (415) 556-8586

State Laws and Regulations

NRS 441A.220 Confidentiality of information; permissible disclosure. *All information of a personal nature about any person provided by any other person reporting a case or suspected case of a communicable disease, or by any person who has a communicable disease, or as determined by investigation of the health authority, is confidential medical information and must not be disclosed to any person under any circumstances, including pursuant to any subpoena, search warrant or discovery proceeding, except:*

1. *As otherwise provided in NRS 439.538.*
2. *For statistical purposes, provided that the identity of the person is not discernible from the information disclosed.*
3. *In a prosecution for a violation of this chapter.*
4. *In a proceeding for an injunction brought pursuant to this chapter.*
5. *In reporting the actual or suspected abuse or neglect of a child or elderly person.*
6. *To any person who has a medical need to know the information for his or her own protection or for the well-being of a patient or dependent person, as determined by the health authority in accordance with regulations of the Board.*
7. *If the person who is the subject of the information consents in writing to the disclosure.*
8. *Pursuant to subsection 4 of NRS 441A.320 or NRS 629.069.*
9. *If the disclosure is made to the Department of Health and Human Services and the person about whom the disclosure is made has been diagnosed as having acquired immunodeficiency syndrome or an illness related to the human immunodeficiency virus and is a recipient of or an applicant for Medicaid.*
10. *To a firefighter, police officer or person providing emergency medical services if the Board has determined that the information relates to a communicable disease significantly related to that occupation. The information must be disclosed in the manner prescribed by the Board.*
11. *If the disclosure is authorized or required by NRS 239.0115 or another specific*

statute.

(Added to NRS by 1989, 299; A 1989, 1476; 1997, 1254; 1999, 1123, 2238, 2245; 2005, 329; 2007, 1277, 1977, 2109)

NRS 441A.230 Disclosure of personal information prohibited without consent.

Except as otherwise provided in this chapter and NRS 439.538, a person shall not make public the name of, or other personal identifying information about, a person infected with a communicable disease who has been investigated by the health authority pursuant to this chapter without the consent of the person.

(Added to NRS by 1989, 300; A 2007, 1978)

Health Insurance Portability and Accountability Act (HIPAA)

Confidentiality of patient information has long been a requirement in the healthcare field and now has its own set of regulations, the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. The new regulations protect the privacy of certain individually identifiable health data, referred to as protected health information (PHI). PHI is individually identifiable health information that is transmitted or maintained in any form or medium (e.g., electronic, paper, or oral), but excludes certain educational and employment records.

Centers for Disease Control and Prevention Guidance on HIPAA

The Centers for Disease Control and Prevention (CDC) published the report “HIPAA Privacy Rule and Public Health: Guidance from CDC and the US Department of Health and Human Services” (*MMWR* 2003;52 [S-2]:1–12 at this hyperlink: <http://www.cdc.gov/mmwr/preview/mmwrhtml/su5201a1.htm>), to provide guidance in implementing the HIPAA requirements. In this report, the US Department of Health and Human Services (DHHS) recognized the importance of sharing PHI to accomplish essential public health objectives and to meet certain other societal needs (e.g., administration of justice and law enforcement).

Covered entities—which are health plans, healthcare clearinghouses, and healthcare providers who transmit health information in electronic form in connection with certain transactions—are permitted by the Privacy Rule to do the following:

- Share PHI for specified public health purposes. For example, covered entities may disclose PHI, without individual authorization, to a public health authority legally authorized to collect or receive the information for the purpose of preventing or controlling disease, injury, or disability.
- Make disclosures that are required by other laws, including laws that require disclosures for public health purposes.²

Nevada’s HIPAA Policies

State of Nevada Department of Health and Human Services information on HIPAA policies may be accessed at:

<http://dhcfp.nv.gov/About/HIPAA/HIPAAMain/>

National Guidelines

The following guidelines for protecting tuberculosis (TB) patients' confidentiality are adapted from the National Tuberculosis Controllers Association's (NTCA's) and Centers for Disease Control and Prevention's (CDC's) "Guidelines for the Investigation of Contacts of Persons with Infectious Tuberculosis: Recommendations from the National Tuberculosis Controllers Association and CDC" (*MMWR* 2005;54[No. RR-15]).

Table 1: **HOW TO PROTECT CONFIDENTIALITY**

Conducting All Activities	<ul style="list-style-type: none"> ▪ Make every attempt to ensure patient confidentiality.
Training	<ul style="list-style-type: none"> ▪ Participate in training on maintaining confidentiality and obtaining informed consent in accordance with local/state laws.
Interviewing Patients	<ul style="list-style-type: none"> ▪ Interview the tuberculosis (TB) patient in a private setting. ▪ Inform the patient about confidentiality rights. ▪ Explain to a human immunodeficiency virus (HIV)-infected patient that HIV status will be kept confidential. ▪ Consult with the patient to identify boundaries for confidentiality and obtain oral consent for any breaches in confidentiality. ▪ <i>If</i> written consent is required, present the consent form to the patient in an appropriate manner and retain a copy in the patient's medical record. If consent is refused, the TB program should develop a plan of action.
Conducting Site Investigations	<ul style="list-style-type: none"> ▪ Plan site investigation procedures in advance of any visit, in consultation with and with the consent of the index patient, if possible. ▪ Obtain agreement to maintain confidentiality from any site personnel who receive information about the identity of the index patient.
Communicating with the Press	<ul style="list-style-type: none"> ▪ Maintain confidentiality in communications with the press.
Breaching Confidentiality	<ul style="list-style-type: none"> ▪ Breach confidentiality only with approval of TB program administrators and with the consent of the TB patient, when possible.

Resources and References

Resources

- CDC. “HIPAA Privacy Rule and Public Health: Guidance from CDC and the US Department of Health and Human Services” (*MMWR* 2003;52[S-2]). Available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/su5201a1.htm> .
- CDC. Module 7: “Confidentiality in Tuberculosis Control” (*Self-Study Modules on Tuberculosis*. Division of Tuberculosis Elimination Web site; 2014). Available at: <https://www.cdc.gov/tb/education/ssmodules/>
- United States Department of Health and Human Services. “Health Insurance Portability and Accountability Act of 1996.” (Public Law 104-191 Web site). Available at: <http://www.aspe.hhs.gov/admsimp/pl104191.htm>.
- United States Department of Health and Human Services. “Office for Civil Rights—HIPAA” [Office for Civil Rights Web site]. Available at: <http://www.hhs.gov/ocr/hipaa/>.
- Curry International Tuberculosis Center.; Tuberculosis Program Manual Template; Accessed on August 10, 2016; Available at: <http://www.currytbcenter.ucsf.edu/products/view/tuberculosis-program-manual-template> .

References

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- ¹ CDC. Module 7: confidentiality in tuberculosis control. *Self-Study Modules on Tuberculosis* [Division of Tuberculosis Elimination Web site]. 2014. Available at: <http://www.cdc.gov/tb/education/ssmodules/pdfs/module7.pdf>. Accessed August 10, 2016.
 - ² CDC. HIPAA privacy rule and public health: guidance from CDC and the US Department of Health and Human Services. *MMWR* 2003;52(S-2):1.