HEALTH INFORMATION DATA SHARING
Issue Brief

Disclosure of Identifiable Information by the Veterans Health Administration for Public Health Purposes

Health care data is necessary for public health activities. Public health agencies collect and use identifiable health information for surveillance, disease investigation and other public health purposes. Health care providers and payers provide much of this data to public health agencies, and thus, play an important role in protecting and promoting public health.

The Veterans Health Administration (VHA), housed within the United States Department of Veterans Affairs (VA), is an important source of data for public health activities. Health care facilities under the jurisdiction of the VHA are a significant component of health care services delivered to the United States population and should be included in public health related reporting and surveillance activities. The estimated veteran population was 22 million as of September 30, 2015.1 In FY2014, nearly 5.6 million veteran patients received health care services through the VHA2 including 92.4 million outpatient visits and 707,400 inpatient admissions.3 This represents approximately two percent of all U.S. hospital admissions.4 It is important to include veteran data with other populations for public health surveillance, assessment, planning and services. This data is also necessary for public health activities relevant to veterans such as exposure to chemical agents or diseases, conditions or injuries that disproportionately affect veterans.

Generally, health care providers and payers may provide identifiable information to public health agencies consistent with the HIPAA Privacy Rule, state privacy laws and state laws that authorize public health activities. However, VHA facilities that provide health care must comply with additional federal laws to provide identifiable health and personal data concerning veterans and their dependents. These laws allow VHA facilities to comply with most state reporting requirements and otherwise support public health activities. Public health agencies must understand these laws, including criteria that allow disclosure and procedures that must be followed to obtain information from VHA facilities. This issue brief provides an overview of these statutes and requirements that permit, and in some cases require, VHA health facilities to release identifiable data, without the patient’s authorization, to public health agencies.
Federal Laws that Protect VHA Data and Limit Disclosure

The VHA, as a component of a federal government agency, a health plan and a health care provider, must comply with all applicable federal privacy and confidentiality statutes and regulations. The following six federal statutes and associated sets of regulations address issues related to health information privacy:

1. The Health Insurance Portability and Accountability Act (HIPAA), Public Law 104-191, implemented by 45 CFR Parts 160 and 164 (The HIPAA Privacy Rule).

These six statutes apply simultaneously and the most restrictive provision prevails for use and/or disclosure of individually identifiable data.

The HIPAA Privacy Rule

The HIPAA Privacy Rule provides minimum federal protections for personal health information held by covered entities and gives patients certain rights with regard to that information. The Rule recognizes the legitimate need for public health authorities and others responsible for ensuring public health and safety to have access to protected health information to carry out their public health mission. It also recognizes that public health reports made by covered entities are an important means of identifying threats to the health and safety of the public at large, as well as individuals. Accordingly, the Rule permits covered entities, such as VHA health facilities, to disclose protected health information without authorization 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, . . . investigations, and . . . interventions....” As required by the HIPAA Privacy Rule, the VHA advises patients in its Notice of Privacy Practices that it may disclose their health information for public health activities without the patient’s permission.

The Privacy Act

The federal Privacy Act regulates the collection, maintenance, use and disclosure of personally identifiable information about individuals in systems of records maintained by federal agencies. State and local government agencies are not covered by the Privacy Act. Thus, federal Privacy Act requirements do not apply to state and local public health agencies with regard to their data-related practices. The Privacy Act balances the federal agencies’ need to maintain information about individuals with the rights of individuals to be protected against unwarranted invasions of their privacy stemming from these agencies’ collection, maintenance, use and disclosure of personal information about them. The Act:

- Restricts disclosure of personally identifiable records maintained by agencies;
- Grants individuals increased rights of access to agency records maintained on themselves;
- Grants individuals the right to seek amendment of agency records maintained on themselves upon a showing that the records are not accurate, relevant, timely or complete;
- Establishes a code of “fair information practices” that requires agencies to comply with statutory norms for collection, maintenance and dissemination of records; and
• Requires that agencies give the public notice of their systems of records by publication in the Federal Register.

Generally, the Privacy Act provides for the confidentiality of individually identified and retrieved information about living individuals and permits disclosure of Privacy Act-protected records only when specifically authorized by the statute. The Privacy Act provides authority for VHA health facilities to disclose identifiable information, excluding information related to drug abuse, alcoholism, sickle cell anemia and testing or treatment for HIV which is afforded special protection under 38 U.S.C. § 7332 (hereinafter “38 U.S.C. § 7332 protected information), to a governmental agency charged by law with protecting the public health or safety, upon written request. In its written request, a qualified representative of the agency must identify the information sought and the legally authorized purpose for which it is sought.

The Freedom of Information Act

The federal Freedom of Information Act (FOIA) does not prohibit disclosure of information. Rather, it compels disclosure of reasonably described VHA records or a reasonably segregated portion of the records to any person upon written request, unless one or more of nine exemptions apply to the records. Information is exempt to the extent that another statute requires that it be withheld, such as the VA Claims Confidentiality Statute (VA claimant and dependent name and address information) and 38 U.S.C. §7332 (drug abuse, alcoholism or alcohol abuse, HIV infection or sickle cell anemia medical treatment information). Additionally, medical files and similar files are exempt if disclosure would constitute a clearly unwarranted invasion of personal privacy.

The Confidentiality of Healthcare Assurance Review Records

The Confidentiality of Healthcare Quality Assurance Review Records statute provides for the confidentiality of quality assurance (QA) information. Records and documents created by VHA health facilities as part of a designated medical quality-assurance program are confidential and privileged. VHA facilities may disclose this information in only a few, limited situations. The statute allows disclosure to a governmental agency charged by law with the protection of the public health or safety, if a qualified agency representative makes a written request that such record be provided for a purpose authorized by law. In such case, identifying information must be removed if disclosure would constitute a clearly unwarranted invasion of personal privacy.

The VA Claims Confidentiality Statute

The VA Claims Confidentiality Statute provides for the confidentiality of names and home addresses of all VA patients, claimants and their dependents. A claimant is any individual who has filed a claim for benefits, including health benefits. VHA health facilities may disclose this information only when specifically authorized by the statute. VHA facilities may disclose individually identifiable information, excluding 38 U.S.C. §7332 protected information, to a government agency charged with the protection of the public health or safety pursuant to a written standing request from the agency that indicates the information is provided for a purpose authorized by law. Willful use of a patient’s name or address for a purpose other than the purpose specified in the request is prohibited.

Select Litigation Regarding the VA Claims Confidentiality Statute

BERNARD FITCH v. VETERANS ADMINISTRATION (8TH CIR. 1979)

The Eighth Circuit Court of Appeals held that the VA did not violate the VA Claims Confidentiality Statute when it released individually identifiable medical information to the State of Oregon to determine the qualifications of persons to operate motor vehicles upon the highways. Reporting of disorders affecting consciousness was mandated by an Oregon statute. Individually identifiable medical information may be disclosed to appropriate state or local agencies and such
Disclosure is not to be limited to names and addresses (i.e. also included date of birth, sex, seizure disorder, treatment and prognosis of the disorder).


The Maryland federal district court held that the VA had no duty to notify the Pennsylvania Department of Motor Vehicles (DMV) that the plaintiff was incapable of safely operating a motor vehicle when there was no written request made to the VA by the DMV as required by the VA Claims Confidentiality Statute.

Confidentiality of Drug Abuse, Alcoholism, Human Immunodeficiency Virus (HIV) Infection and Sickle Cell Anemia Medical Records

Any individually identifiable information related to VA treatment of drug abuse, alcoholism, sickle cell anemia and testing or treatment for HIV has special protection under 38 U.S.C. § 7332. With respect to HIV infection, the law protects the fact that an individual was tested for HIV as well as all test results, regardless of whether they are positive or negative. The information protected by 38 U.S.C. § 7332 can only be disclosed as authorized by the statute and the implementing VA regulation. These allow only limited disclosure of information related to HIV infection and prescriptions for controlled substances, as described below.

Reporting HIV Infection

To obtain HIV information, federal or state law must require HIV reporting to the public health agency, which must make a written request. In the case of a state law, the applicable law must provide for a penalty or sanction to be assessed against individuals who fail to report as required by the law. HIV records disclosed to a public health authority may not be re-disclosed or used for a purpose other than the purpose stated in the written request letter.

Partner Notification of HIV Infection

Veterans who test positive for HIV infection should be strongly encouraged by their provider to notify sexual or needle-sharing partners of their HIV status. With the individual's consent, a VHA provider may assist the individual with disclosing this information and/or may disclose the information on the individual's behalf. Alternatively, the provider may encourage the individual to utilize state or local partner notification services.

Under certain circumstances, federal law allows a veteran's VHA physician or professional counselor to notify the individual's spouse or other sexual partners, without the individual's consent, that the individual is infected with HIV. The physician or professional counselor can only do this if he or she has first made reasonable efforts to counsel and encourage the individual to provide the information to the spouse or sexual partner. The physician or professional counselor may disclose if they reasonably believe that the individual will not provide the information to the spouse or sexual partner and that the disclosure is necessary to protect the health of the spouse or sexual partner. The VA HIV Prevention Handbook recognizes "[i]t is the professional and ethical responsibility of VHA providers to make use of available partner notification services by contacting the state and local health department" when permitted by law. If a patient refuses to disclose, a VHA facility may wish to consult the applicable Veterans Integrated Service Network (VISN) Regional Counsel to determine an ethically appropriate and lawful course of action.

Disclosure to State Prescription Drug Monitoring Programs

Federal law allows reporting to a State controlled substance abuse monitoring program certain information concerning the prescription of controlled substances to the extent necessary to prevent misuse and diversion of prescription drugs. Information that can be disclosed includes the individual's name and contact information, information about the prescribed
controlled substance, and prescriber information. As noted above, other applicable laws require State controlled substance abuse monitoring programs to submit a written request in order to receive data from a VHA facility.

**VHA Policies for Disclosing Data to Public Health Authorities**

The VHA has issued a number of policy directives and handbooks to further guide release of data to public health authorities by VHA facilities. Most broadly, VHA Handbook 1605.1, Privacy and Release of Information, must be used by VHA staff in processing requests for health information and determining whether federal law permits disclosure. The Handbook reflects the VHA’s interpretation of applicable laws and policies and sets out procedures that must be followed for their implementation.

Recognizing the importance of public health reporting, VHA Directive 2013-008, Infectious Disease Reporting, establishes a requirement for VHA health care facilities to report on designated reportable diseases according to the statutes, regulations, and policies of states and territories. The Directive instructs VHA facilities to follow VHA Handbook 1605.1 and to comply with other applicable laws on release of information; thus, each VHA facility must have a standing written letter request on file from each public health authority to which it reports. VHA facilities must comply with the timeframe for reporting that is established by the applicable state or territory.

As a component of the infectious disease reporting requirement, VHA medical facilities must ensure that confirmed positive HIV test results are communicated to state and local public health authorities in accordance with federal law and VHA guidance. Because records maintained in connection with testing, diagnosis, and treatment of HIV are afforded special protection under 38 U.S.C. § 7332, HIV related information may only be released if the applicable state law requires (rather than authorizes) reporting of HIV infection and provides for a penalty or sanction against individuals who fail to report. VHA Handbook 1605.1 places a similar limitation on disclosure of individually identifiable health information to state and local registries, allowing reporting to governmental registries only if required, rather than authorized, by law. VHA facilities may not disclose individually identifiable data to private registries without patient consent.

As described above, federal privacy and confidentiality laws include exceptions that allow for release of individually identifiable health data, excluding 38 U.S.C. §7332 protected information, to public health agencies pursuant to a written request for a purpose authorized by law. Examples of public health reporting that require a standing request include:

- Communicable and/or infectious diseases (e.g., hepatitis, tuberculosis, sexually transmitted diseases, anthrax, novel influenza, SARS, yellow fever, etc.)
- Vital statistics (e.g., births, deaths, etc.)
- Registries (e.g., cancer, birth defects, etc.)
- Immunizations (e.g. vaccination against H1N1 influenza during the 2009 pandemic)
- Other state reporting requirements (e.g., animal bites, lead poisoning, etc.)

**Written Standing Requests**

A standing written request letter must be submitted to each VHA facility by a qualified representative of the requesting agency. The letter must include a citation or a written copy of the state statute or other applicable law that authorizes or requires the collection of information on a routine basis. In addition, a standing written request letter must state:

- The names, addresses and other information that will be used for a purpose authorized by law in accordance with 38 U.S.C. §§ 5701 and 7332;
- Each of the legally authorized purposes for which the information will be used;
- That the information will not be used for any other purpose than those stated in the request; and
• That the requesting agency is aware of the penalty provision of 38 U.S.C. § 5701(f)(2). This section states that willful use of the patient’s name and/or address for any purpose other than for the purpose specified in the request is a misdemeanor, carrying a fine of not more than $5,000 for a first offense and not more than $20,000 for a subsequent offense.46

According to the Handbook, standing request letters are valid for a period of three years, at which time the letter must be reissued.47

In addition to the general requirements set forth above for standing written request letters, VHA Directive 2014-1072, Release of VA Data to State Cancer Registries, requires a request for release of data to a state cancer registry to (1) be on the state agency’s official letterhead and (2) include a citation to the state law that authorizes the state to enforce or compel compliance with the requirement.48 A Data Use Agreement is also required for disclosure to state cancer registries, as specified in this Directive and VHA Handbook 1080.01, Data Use Agreements.49

The VHA Privacy Office has prepared a Privacy Fact Sheet for VHA facilities to use when processing standing letters,50 as well as several template letters to assist VHA facilities with public health reporting.51 For assistance, contact the privacy officer of the VHA facility from which information is sought or the VHA Privacy Office at 202.273.5070 or privacyservice@va.gov. The VHA provides contact information for all VHA health facilities on its website.

De-Identification

The federal laws described above protect identifying information about an individual. The VHA Handbook instructs that de-identified information is not considered to be individually identifiable; therefore, the Privacy Act, HIPAA and the VA confidentiality statutes (38 U.S.C. §§ 5701 and 7332) do not apply.52 Thus, VHA health facilities may disclose de-identified information to public health agencies.53

The VHA Handbook defines “de-identified Information” as “health information that does not identify an individual and to which there is no reasonable basis to believe that the information can be used to identify an individual.” Appendix B, reproduced below, sets out the steps that must be followed to de-identify information. These steps follow the HIPAA Privacy Rule, requiring either:

a. A person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable applying such principles and methods:

(1) Determines that the risk that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an individual who is a subject of the information is very small; and

(2) Documents the methods and results of the analysis that justify such determination.

OR

b. VHA does not have actual knowledge that the information could be used alone or in combination with other information to identify an individual who is a subject of the information. The following identifiers of the individual or of relatives, employers or household members of the individual are removed:

(1) Names.
(2) All geographic subdivisions smaller than a state, including street address, city, county, precinct, zip code and their equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of the Census:

(a) The geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and

(b) The initial three digits of a zip code for all such geographic units containing 20,000 or fewer people are changed to 000.

NOTE: The Veterans Health Administration (VHA) considers the de-identification standard of the HIPAA Privacy Rule for address acceptable [...] under Title 38 United States Code (U.S.C.) 5701 [as well].

(3) All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older.

(4) Telephone numbers.

(5) Fax numbers.

(6) Electronic mail addresses.

(7) Social security numbers.

(8) Medical record numbers.

(9) Health plan beneficiary numbers.

(10) Account numbers.

(11) Certificate and/or license numbers.

(12) Vehicle identifiers and serial numbers, including license plate numbers.

(13) Device identifiers and serial numbers.

(14) Web Universal Resource Locators (URLs).

(15) Internet Protocol (IP) address numbers.

(16) Biometric identifiers, including finger and voice prints.

(17) Full-face photographic images and any comparable images.

(18) Any other unique identifying number, characteristic or code, except as permitted by paragraph 3 [of Appendix B, providing guidelines for re-identification of de-identified records by VHA].

NOTE: Scrambling of names and social security numbers is not considered de-identifying health information for the purposes of this Handbook.

VHA health facilities may also disclose a limited data set for public health purposes pursuant to a data use agreement. A limited data set is protected health information from which certain specified direct identifiers of the individuals and their relatives, household members and employers have been removed. The data, however, could include indirect identifiers such as dates and demographic information.
As set out in this fact sheet, the Privacy Act, HIPAA Privacy Rule and VA Claims Confidentiality Statute have exceptions to their privacy protections that allow VHA facilities to disclose individually identifiable information to a public health agency to carry out its public health functions. This means that generally, it would be unnecessary for VHA facilities to de-identify information or provide a limited data set to public health agencies that have submitted written standing requests. However, there is one exception: the Confidentiality of Drug Abuse, Alcoholism and Alcohol Abuse, Human Immunodeficiency Virus (HIV) Infection and Sickle Cell Anemia Medical Records provisions. For this information, a de-identified or limited data set might provide an avenue for a public health agency to obtain useful, albeit limited, information for surveillance, assessment and other public health purposes.

Two diagrams are included at the end of this fact sheet to illustrate pathways for VHA facility disclosure of data to public health authorities, showing permissible and impermissible VHA data disclosure to public health agencies.
Diagram 1: Pathway for VHA Facility Disclosure of Data to Public Health Authorities

This diagram covers disclosure of personal and health information, except for information related to VA treatment of drug abuse, alcoholism, sickle cell anemia and testing or treatment for HIV, which is provided special protection1.

1. Additional protections apply under 38 U.S.C. § 7332 to individually identifiable information related to VA treatment of drug abuse, alcoholism, sickle cell anemia and testing or treatment for HIV.

2. Defined by HIPAA/HITECH.

3. If the requesting agency is a registry rather than a state or local public health agency, disclosure is only allowed if required rather than authorized by state law.

4. Data Use Agreement required for disclosure to state cancer registries.
Diagram 2: Pathway for VHA Facility Disclosure of Data to Public Health Authorities

This diagram covers disclosure of personal and health information related to VA treatment of drug abuse, alcoholism, sickle cell anemia and testing or treatment for HIV, which have special protection.

1. Additional protections apply under 38 U.S.C. § 7332 to individually identifiable information related to VA treatment of drug abuse, alcoholism, sickle cell anemia and testing or treatment for HIV.

2. Defined by HIPAA/HITECH.

3. Under 38 C.F.R. § 1.486(a), the applicable state law must also provide for a penalty or sanction to be assessed against individuals who fail to report as required by the law.

---

Data request to VHA facility from Public Health Authority

- De-identified Data
  - Yes → No Data Use Agreement (DUA) or Standing Letter Request required → Approved by VHA facility privacy officer → Data provided to requestor
  - No → Limited Data Set
    - Yes → DUA required → Approved by VHA facility privacy officer → Data provided to requestor
    - No → Identifiable Data regarding controlled substances prescriptions
      - Yes → Reporting to state substance abuse monitoring systems
      - No → Identifiable Data related to VA testing or treatment for HIV
        - Yes → Case reporting to a public health authority that is required by state law
          - Yes → Qualified representative submits Standing Written Request Letter → Citation to or written copy of authorizing statute provided → Approved by VHA facility privacy officer → Data provided to requestor
          - No → No Data Use Agreement (DUA) or Standing Letter Request required → Approved by VHA facility privacy officer → Data provided to requestor
        - No → No Data Use Agreement (DUA) or Standing Letter Request required → Approved by VHA facility privacy officer → Data provided to requestor
Resources

- **U.S. Department of Veterans Affairs**
  - Privacy laws, regulations, and policies [http://www.oprm.va.gov/privacy/resources_privacy.aspx](http://www.oprm.va.gov/privacy/resources_privacy.aspx)

- **HIPAA Privacy Rule**
  - HHS: Health Information Privacy [http://www.hhs.gov/ocr/hipaa](http://www.hhs.gov/ocr/hipaa)
  - HIPAA Privacy Rule and Public Health, Guidance from CDC and the U.S. Department of Health and Human Services, MMWR (April 11, 2003) [http://www.cdc.gov/mmwr/preview/mmwrhtml/m2e411a1.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/m2e411a1.htm)

- **Federal Privacy Act**

- **Freedom of Information Act**

SUPPORTERS

The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation with direction and technical assistance by the Public Health Law Center at William Mitchell College of Law.

This document was developed by Denise Chrysler, J.D., director, and Colleen Healy, J.D., staff attorney, for the Network for Public Health Law- Mid-States Region at the University of Michigan School of Public Health, and Robyn Rontal, J.D., M.H.S.A, a Network collaborator on health information data sharing. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.


5 See HIPAA Privacy Rule, 45 C.F.R. Parts 160 and 164 (subparts A and E).

6 45 C.F.R. § 164.512(b).


8 45 C.F.R. § 164.520.


21 38 U.S.C. §§ 5701 (e) and (f).


23 597 F.2d 1152 (8th Cir. 1979).

24 At the time this case was decided, the VA Claims Confidentiality Statute was found at 38 U.S.C. § 3301. On May 7, 1991, the statute was redesignated as 38 U.S.C. § 5701 via Public Law 102-40.


26 At the time this case was decided, the VA Claims Confidentiality Statute was found at 38 U.S.C. § 3301. On May 7, 1991, the statute was redesignated as 38 U.S.C. § 5701 via Public Law 102-40.

27 38 C.F.R. § 1.460 (defining “Infection with the human immunodeficiency virus (HIV)” to include “the testing of an individual for the presence of the virus or antibodies to the virus and information related to such testing (including tests with negative results”).

28 38 C.F.R. §§ 1.460-1.496.


30 38 C.F.R. § 1.486(a).


33 Id.
35 Id.
36 United States Department of Veterans Affairs, VA HIV PREVENTION HANDBOOK: A GUIDE FOR CLINICIANS, supra note 31, at 80.
38 38 C.F.R. § 1.515.
39 See, e.g., 38 U.S.C. 5701 (f);
42 Department of Veterans Affairs, Veterans Health Administration, Frequently Asked Questions: Infectious Disease Reporting by VHA Facilities, available through VA Intranet website (last visited May 23, 2016) and at http://www.networkforphi.org/_asset/2b5sb7/FAQs-Public-Health-Reporting-of-Infectious-Diseases.docx.
45 See Department of Veterans Affairs, Veterans Health Administration, VHA Handbook 1605.1, Privacy and Release of Information, supra note 39, at 59-60.
47 See Department of Veterans Affairs, Veterans Health Administration, VHA Handbook 1605.1, Privacy and Release of Information, supra note 39, at 60.
50 Department of Veterans Affairs, Veterans Health Administration, Privacy Office, Privacy Fact Sheet (May 2015), available through VA Intranet website (last visited May 23, 2016) and at http://www.networkforphi.org/_asset/11r2gr/StandingLetterFactSheetVol15No1.docx.
51 See Department of Veterans Affairs, Veterans Health Administration, Solicitation Letter Template, available through VA Intranet website (last visited May 23, 2016) and at http://www.networkforphi.org/_asset/605th/Solicitation_Letter_Template.docx; Department of Veterans Affairs, Veterans Health Administration, 5701 Acknowledgement Letter Template, available through VA Intranet website (last visited May 23, 2016) and at https://www.networkforphi.org/_asset/0hxkh/5701_Acknowledgement_Letter_Template.docx; Department of Veterans Affairs, Veterans Health Administration, Denial Letter Template, available through VA Intranet website (last visited May 23, 2016) and at http://www.networkforphi.org/_asset/ez84mz/Denial_Letter_Template.docx.
52 See Department of Veterans Affairs, Veterans Health Administration, VHA Handbook 1605.1, Privacy and Release of Information, supra note 39, at 2.
53 See id. at 2 and Appendix B.
54 Id. at Appendix B.
55 See id. Appendix B, page B-2, paragraph 3, for guidelines pertaining to re-identification of de-identified records.
56 Id.
57 Id. at 9 and Appendix F.